United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL WITH PROOF OF SERVICE

76-1303

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B
895

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs

PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, AND YOK LEE,

Defendants-Appellants.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs

MARK McDONALD,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
NOV 22 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

(5866)

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INDEX

	Page
DOCKET ENTRIES	A-1
SEARCH WARRANT	A-12
AFFIDAVIT FOR SEARCH WARRANT	A-19
EXHIBIT A TO AFFIDAVIT FOR SEARCH WARRANT - PURCHASE ORDER OF BASF WYANDOTTE CORPORATION AND CASHIER'S CHECK PAYABLE TO BASF WYANDOTTE CO.	A-25
EXHIBIT B TO AFFIDAVIT FOR SEARCH WARRANT - PURCHASE ORDER OF BASF WYANDOTTE CORPORATION, BILL OF LADING, AND PERSONAL MONEY ORDERS PAYABLE TO BASF WYANDOTTE	A-27
INDICTMENT, CR. NO. 75-CR-166	A-30
INDICTMENT, CR. NO. 76-CR-15	A-34
NOTICE OF MOTIONS OF DEFENDANT LEE	A-39
MOTION OF DEFENDANT LEE TO CONTROVERT SEARCH WARRANT	A-42
AFFIRMATION OF DAVID S. MICHAELS, ESQ., FOR DEFENDANT LEE, IN SUPPORT OF MOTION	A-43
EXHIBIT TO MICHAELS AFFIRMATION - PHOTOCOPY OF PAGE 434 OF THE ENCYCLOPEDIA OF CHEMICAL TECHNOLOGY	A-57
NOTICE OF MOTION OF DEFENDANT LAZARSKI	A-58
AFFIDAVIT OF E. STEWART JONES, JR., ESQ., FOR DEFENDANT LAZARSKI, IN SUPPORT OF MOTION	A-67
NOTICE OF MOTION OF DEFENDANT NEWMAN	A-73
AFFIDAVIT OF DONALD J. SHANLEY, ESQ. FOR DEFENDANT NEWMAN, IN SUPPORT OF MOTION	A-75

INDEX

			Page
NOTICE OF MOTION OF DEFENDANT WINNER			A-101
AFFIDAVIT OF PAUL E. CHEESEMAN, ESQ., FOR DEFENDANT WINNER, IN SUPPORT OF MOTION			A-104
NOTICE OF MOTIONS OF DEFENDANT McDONALD			A-112
MOTION OF DEFENDANT McDONALD TO CONTROVERT SEARCH WARRANT			A-115
AFFIDAVIT OF PAUL R. KIETZMAN, ESQ., FOR DEFENDANT McDONALD, IN SUPPORT OF MOTION			A-117
GOVERNMENT'S MEMORANDUM OF LAW IN OPPOSITION TO MOTIONS			A-128
TRANSCRIPT OF SUPPRESSION HEARING			A-138
Defendants' Witnesses:			
Frank Soa		Direct	A-155
		Cross	A-172
		Redirect	A-182
	(Recalled)	Direct	A-299
		Cross	A-303
		Redirect	A-306
William Timm		Direct	A-184
		Cross	A-199
Plaintiff's Witness:			
Paul DeZan		Direct	A-222
		Cross	A-231
MEMORANDUM DECISION AND ORDER ON MOTIONS			A-314
TRANSCRIPT OF PROCEEDINGS ON CHANGE OF PLEA BY DEFENDANT WINNER			A-323
TRANSCRIPT OF PROCEEDINGS ON CHANGE OF PLEA BY DEFENDANTS LAZARSKI, NEWMAN AND LEE			A-337

INDEX

	Page
TRANSCRIPT OF PROCEEDINGS ON CHANGE OF PLEA OF DEFENDANT McDONALD	A-379
PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN	A-394
EXHIBIT A-1 TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM HEADMASTER OF ST. PAUL'S SCHOOL TO CHIEF PROBATION OFFICER DATED MAY 13, 1976	A-400
EXHIBIT A-2 TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER OF RECOMMENDATION FROM HEADMASTER OF ST. PAUL'S SCHOOL DATED 1968/69	A-401
EXHIBIT B TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM RENSSELAER POLYTECHNIC INSTITUTE TO CHIEF PROBATION OFFICER DATED MAY 13, 1976	A-402
EXHIBIT C TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM GERARD A. GLASSER, C.P.A. TO CHIEF U.S. PROBATION OFFICER DATED MAY 13, 1976	A-403
EXHIBIT D TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM PRINCIPAL OF OCEANSIDE SENIOR HIGH SCHOOL TO CHIEF PROBATION OFFICER DATED MAY 13, 1976	A-404
EXHIBIT E TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM MICHAEL ORANGE, M.D. TO CHIEF PROBATION OFFICER DATED MAY 11, 1976	A-405
EXHIBIT F TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM DIRECTOR OF SARAH CENTER, FAMILY THERAPY TRAINING INSTITUTE TO CHIEF PROBATION OFFICER DATED MAY 21, 1976	A-406

INDEX

	Page
EXHIBIT G TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM ELAINE SILVER TO CHIEF PROBATION OFFICER DATED MAY 18, 1976	A-410
EXHIBIT H TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM SEYMOUR G. NUMEROFF, D.D.S. TO CHIEF PROBATION OFFICER DATED MAY 19, 1976	A-413
EXHIBIT I TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM BERNARD S. GROSS, VICE PRESIDENT AND MANAGEMENT SUPERVISOR OF BBDO TO CHIEF PROBATION OFFICER DATED MAY 28, 1976	A-414
EXHIBIT J TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM MURRAY ALBERT, PROFESSOR-N.Y.U., DIRECTOR OF PSYCHOLOGY-N.Y.U. MEDICAL CENTER, UNIVERSITY HOSPITAL TO CHIEF PROBATION OFFICER	A-416
EXHIBIT K TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM DEFENDANT NEWMAN'S MOTHER TO MR. BOICE DATED JUNE 2, 1976	A-418
PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI	A-420
EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - RESUME OF DEFENDANT LAZARSKI	A-440
EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - DEFENDANT LAZARSKI'S BACHELOR OF SCIENCE IN CHEMISTRY DEGREE	A-441
EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS	A-442
PRE-SENTENCING MEMORANDUM OF DEFENDANT LEE	A-467

INDEX

	Page
PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD	A-476
EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD - PERSONAL REFERENCES OF DEFENDANT McDONALD	A-487
TRANSCRIPT OF SENTENCING	A-496

A-1

DOCKET ENTRIES

Felony ☒ Minor Offense ☐ or Misdemeanor ☐ | JUDGE/MAGISTRATE | Assigned Trial | Disp./Sentence

206 District | 6 Office

• U.S. vs. NEWMAN, CRAIG defendant

Day 29 | Mo. 12 | Yr. 75 | Docket No. 166 2

No. of 4 Defdnts

I. CHARGES

U.S. CODE SECTION	OFFENSES	COUNTS
21§841(a)(1) & 18 USC § 2	Manufacturing Controlled Substance	1
21 §846	Conspiracey	2

MAGR. CASE NO. 22M, 1

BAIL • RELEASE: ☐ Denied ☐ Personal R ☐ Unsecured ☐ Conditional Re

AMT Set (000) $ 25

☐ 10% ☐ Surety ☒ Collat ☐ 3rd P Custd ☐ PSA

☐ Bail Not Made ☐ Bail Status Changed (See Docket) date

ATTORNEYS

U.S. Attorney or Asst.: William Dreyer, Asst.

Defense: ☐ CJA ☒ Ret: ☐ Waived, ☐ Self, ☐ None ☐ Other, ☐ PD, ☐ CD

Donald J. Shanley, 35 First St. Troy

BY INTERVALS OF DATES

ARREST: 12/19 or U.S. Custody Began on Above Charges; ☐ Prosecution Deferred

☐ High Risk Defn. & Date Design'd

INDICTMENT ☒ Information ☐: 12/29; Waived ☐; Superseding ☐ Indict/Info ☐

ARRAIGNMENT: 1/5; 1st Plea •; Final Plea

TRIAL: Trial Set For; ☒ Not Guilty ☐ Nolo ☐ Guilty; ☐ Not Guilty ☐ Nolo ☐ Guilty; Voir Dire ☐; Trial Began ☐ J ☐ N J; Trial Ended

SENTENCE: Disposition; ☐ Convicted ☐ Acquitted ☐ Dismissed: ☐ Nolled/Discontinued*; ☐ On All C ☐ On Less Offense ☐ WOP;

BY MAGISTRATE

		DATE	INITIAL/No.
Search Warrant	Issued	12/18	Mag.Spain
	Return	12/19	
Summons	Issued		
	Served		
Arrest Warrant			
COMPLAINT		12/18	

INITIAL APPEARANCE — INITIAL/No.

PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled 12/29; Date Held ____; ☐ Waived; ☒ Not Waived; ☐ Intervening Indictment

Tape No. — INITIAL/No.

OUTCOME: ☐ Dismissed; ☐ Held for District GJ; BOND ☐ Exonera ☐ To Tran District; ☐ Held to Answer to U. S. District Court; AT:

Magistrate's Initials ▶

OFFENSE (In Complaint): Schedule 2, Chapter 13, T21,USC. Manufacture of controlled subst

• Show last names and suffix numbers of other defendants on same indictment/information

DATE	PROCEEDINGS	V. Excludable Dc (a)	(b)	(c
1975 12/29	Filed Indictment #1			
12/29	Filed Search Warrant,&APplication; Magistrate's Temporary Commitment.			
12/29	Filed Appearance Bond in amount of $25,000 dated December 22, 1975, Surety: Craig Newman, Mag. Spain. Receipt for $25,000 check.			
12/31	Filed Mag. Warrant of Arrest & Complaint. Warrant executed 12/19/75			
1/5/76	The defendant is arraigned and pleads not guilty. Thirty days to file motions. Continued on bond.			
2/6/76	Filed Notice of Motion and affidavit returnable 2/17/76 for modification of bail condition.			
2/13/76	Filed Notice of Motion and affidavit returnable 3/1/76 for discovery and inspection			
2/17/76	Motion for order modifying present bail conditions by deft. - granted.			
2/20/76	Filed Notice of motion for Craig Newman requesting no property or information seized brom deft. be introduoted as evidence , returnable March 1, 1976.			

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC §3161(h) – "SPEEDY TRIAL ACT".

DOCKET ENTRIES

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
2/13/76	Filed Affidavit in response to deft. motion to reduce bail.				
2/34/76	Filed extension of time to file motions.				
2/25/76	Filed Order for Modification of Bail Conditions				
2/25/76	Filed Secured Appearance Bond.				
2/25/76	Filed Motion to consolidate Indictment with 76-CR-15, returnable 3/15/76.				
3/1/76	Adjourned to March 15 by consent				
3/10/76	Filed Notice of Motion re property and information seized not to be used in evidence, etc., returnable March 15 at Albany. Filed Affidavit.				
3/15/76	Adjourned to April 5, by consent				
3/29/76	Filed Notice of Motion severing further proceedings in regard to deft., Affidavit & Exhibits returnable April 5, 1976 at Albany				
4/2/76	Filed Memorandum of Law and Affidavits.				
4/5/76	Filed Affidavit in response to deft. Lazarski's Motion to suppress Statements and Admissions.				
4/5/76	Filed Order signed by Judge Foley granting motion for Independent analysis be granted.				
April 5	Motion for discovery and inspection by deft-granted to extent furnished by govt., otherwise denied. Motion for an order requiring and directeng that no property or information which was seized be introduced as evidence against said deft.-deferred for hearing. Motion to consolidate Indictments 75-CR-166 & 76-Cr-15, by plaintiff-motion granted.				
1	Motion for severance by deft. Newman-Motion granted. Order to be submitted by gov't. covering all motions denied and granted.				
April 6	Omnibus Hearing in re Motions to Controvert Search Warrant by defts. Reserved decision.				
April 16	Filed Joint Memorandum of Law- defts.				
" 15	Filed Supplemental Memorandum of Law.				
April 27	Filed Order signed by JudgeFoley ordering alleged methaqualone delivered for analysis.				
April 30	Filed Memorandum-Decision and Order of Judge Foley denying and dismissing motions to suppress materials seized.				
May 3	The deft. withdraws plea of not guilty and pleads guilty to Count two. Presentence investigation ordered. Sentence deferred without date. Continued on bail.				
June 21	The Court advised the defendant of his right to speak in his own behalf, deft. spoke, his attorney spoke. The deft. is adjudged a YAO under 18USC4216(previously 18 USC 4209) with the express finding the defendant will benefit from treatment under FYCA. The deft. is sentenced under 18USC 5010(b) to the custody of the Atty. Gen. for treatment and supervision until discharged by the Youth Division under 18USC 5017 (c), on Count two. Count one is dismissed on motion of Wm. Dreyer, AUSA. Sentence is stayed pending appeal on the denial of suppression motion. Continued on bail as peeviously posted.				

(a) Interval (per Section II)	(b) Start Date / End Date	(c) Ltr. Code	(d) Total Days

BEST COPY AVAILABLE

DOCKET ENTRIES

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs NEWMAN, CRAIG

75- 166
Yr. | Docket No

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE (a)	(b)
1976 June 23	Filed Judgment		
June 24	Filed Notice of Appeal		

AO-257

Interval
Inter Section III

Start Date
End Date

DOCKET ENTRIES

JUDGE/MAGISTRATE: 206 6 (District Office) — Disp./Sentence — Assigned Trial — Minor Offense ☐ — Other Misdemeanor ☐

U.S. vs. LAZARSKI, PETER MICHAEL — defendant — Day 29 — No. 11 — 75 — Docket No. 166 — No. of Defdnts 4

I. CHARGES

U.S. CODE SECTION	OFFENSES	COUNTS
21 §841(a)(1)	Manufacturing Controlled substance	1
18 USC § 2		
21 § 846	Conspiracy	2

MAGR. CASE NO. 21M

BAIL • RELEASE: ☐ Denied — ☐ Personal — ☐ Unsecured — AMT Set (000) $ 25 — ☐ Conditional R. — ☐ 10% — ☒ Surety — ☐ Coll. — ☐ Bail Not Made — ☐ Bail Status Changed (See Docket) — ☐ 3rd Cust. — ☐ PSA — date

ATTORNEYS

U.S. Attorney or Asst.: William Dreyer, Asst.

Defense: ☐ CJA ☒ Ret: ☐ Waived, ☐ Self, ☐ None ☐ Other, ☐ PD, ☐ CD

E. Stewart Jones, Jr.
28 Second Street, Troy

KEY INTERVALS DATES

ARREST: 12/19 or U.S. Custody Began on Above Charges — ☐ Prosecution Deferred

☐ High Risk Defn. & Date Design'd

INDICTMENT: Information ☐ 12/29 — Waived ☐ — Superseding ☐ Indict/Info ☐

ARRAIGNMENT: 1/5 — 1st Plea — " — Final Plea

TRIAL: Trial Set For — Voir Dire ☐ — ☒ Not Guilty — ☐ Nolo — ☐ Guilty — Not Guilty — Nolo — Guilty — Trial Began ☐ J ☐ N — Trial Ended

SENTENCE: Disposition — ☐ Convicted — ☐ Acquitted — ☐ Dismissed: — ☐ Nolled/Discontinued — ☐ On All — ☐ On Le... Offens — ☐ WOP;

MAGISTRATE

		DATE	INITIAL/No.
Search Warrant	Issued	12/18	Mag.Spain
	Return	12/19	
Summons	Issued		
	Served		
Arrest Warrant			
COMPLAINT ▶		12/18	

INITIAL APPEARANCE 12/19 — INITIAL

PRELIMINARY EXAMINATION OR REMOVAL HEARING — Date Scheduled 12/29 — Date Held — ☐ Waived — ☒ Not Waived — ☐ Intervening Indictment

Tape No. — INITIAL/No.

OUTCOME: ☐ Dismissed — ☐ Held for District GJ — BOND ☐ Exoner ☐ To Tra District — ☐ Held to Answer to U. S. District Court — AT: — Magistrate's Initials ▶

OFFENSE (In Complaint): Schedule 2, Chapter 13,T21,USC., Manufacture of Controlled Subst

• Show last names and suffix numbers of other defendants on same indictment/information

V. Excludable D (a) (b)

DATE	PROCEEDINGS
1975	
12/29	Filed Indictment
12/29	Filed Search Warrant & Application; Magistrate's Temporary Commitment.
12/29	Filed Appearance Bond dated Dec. 22, Surety: Peerless Ins. Co., Bail Reform Act Form No. 2
12/31	Filed Mag. Warrant of Arrest & Complaint. Warrant executed 12/19
1/5/76	The defendant is arraigned and pleads not guilty. Thirty days to file motions. Continued on bond.
2/24/76	Filed Extension of Time to file motions
2/25/76	Filed Notice of Motion to consolidate Indictment with 76-CR-15 returnable March 15.
3/1/76	Adjourned to March 15, 1976 by consent.
3/10/76	Filed Notice of Motion for Order suppressing statements, etc. returnable March 15 at Albany. Filed supporting affidavit.
3/15/76	~~Filed~~ Adjourned to April 5 by consent.
April 2	Filed Memorandum of Law and Affidavits.
" 5	Filed Affidavit in response to deft. Lazarski's motion to Suppress Statements & Admissions.

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC §3161(h) — "SPEEDY TRIAL ACT".

DOCKET ENTRIES

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
1976					
April 5	Filed Order of Judge Foley granting motion for Independent analysis be granted.				
April 5	Motion to controvert Search Warrant -Decision Reserved Motion for Suppression-deferred to time of trial. Motion for a Bill of Particulars-granted to ~~fix~~ extent furnished by govt., otherwise denied. Motion for discovery-granted to extent furnished by govt. otherwise denied.				
April 5	Motion to consolidated by plaintiff 75-CR-166 & 76-CR-15 - granted. Order to be submitted by gov't. covering all motions denied and granted.				
April 6	Omnibus Hearing in re Motions to Controvert Search Warrant by defts. Reserved decision.				
April 16	Filed Joint Memorandum of Law-- defts.				
April 15	Filed Supplemental Memorandum of Law.				
April 27	Filed Order signed by Judge Foley ordering alleged methaqualone delivered for analysis.				
April 30	Filed Memorandum-Decision & Order of Judge Foley's denying and dismissing motions to suppress materials seized.				
May 3	The deft. withdraws plea of not guilty and pleads guilty to Count two. Presentence investigation ordered. Sentence deferred without date, continued on bail.				
June 21	The court advised the defendant of his right to speak in his own behalf, deft. spoke, his attorney spoke. The deft. is adjudged a Young Adult Offender under 18USC 4216(previously 18USC 4209) with the express finding the deft. will benefit from treatment under the FYCA. Deft. is sentenced under 18 USC5010(b) to the custody of the Atty. Gen. for treatment and supervision until discharged by the Youth Division under 18USC 5017(c) on Count two. Count one is dismissed on motion of Wm. J. Dreyer, AUSA. Sentence is stayed pending appeal on the denial of suppression motions. Continued on bail as previously posted.				
June 23	Filed Judgment.				
June 25	Filed Notice of Appeal				

	(a)	(b)	(c)	(d)
	Interval (per Section II)	Start Date / End Date	Ltr. Code	Total Days

DOCKET ENTRIES

Felony ☒ JUDGE/MAGISTRATE Assigned Trial
Trial Offense ☐
Other Misdemeanor ☐
206 6 (District / Office) Disp./Sentence

• U.S. vs. WINNER, NEIL BRUCE (defendant)

Day 29 | Mo. 12 | Yr. 75 | Docket No. 166 3
No. of 4 Defdnts

I. CHARGES

U.S. CODE SECTION	OFFENSES	COUNTS
21§841(a)(1)	Manufacturing Controlled substance	1
18 USC §2		
21 §846	Conspiracy	2

MAGR. CASE NO. 20M

BAIL & RELEASE
☐ Personal
Denied ☐ Unsecured
AMT ☐ Conditional P
Set (000) $ 25
☐ 10% ☒ Surety ☐ Co-Signed ☐ 3rd Party Cust. ☐ PS
date ☐ Bail Not Made ☐ Bail Status Changed (See Docket)

ATTORNEYS

U.S. Attorney or Asst.: William Dreyer, Asst.

Defense: ☐ CJA ☒ Ret. ☐ Waived ☐ Self ☐ None ☐ Other ☐ PD ☐ CD
Paul E. Cheeseman
90 State St., Albany

KEY TO INTERVALS OF DATES

ARREST: 12/19 or U.S. Custody Began on Above Charges
☐ High Risk Defn. & Date Design'd
☐ Prosecution Deferred

INDICTMENT ☐ Information ☐: 12/29
☐ Waived
☐ Superseding Indict/Info

ARRAIGNMENT: 1/5 (1st Plea) 1/5 (Final Plea)
Trial Set For
☒ Not Guilty ☐ Nolo ☐ Guilty
☐ Not Guilty ☐ Nolo ☐ Guilty

TRIAL
Voir Dire ☐
Trial Began ☐ J ☐ N
Trial Ended

Disposition
☐ Convicted ☐ On Plea ☐ On Lesser Offense
☐ Acquitted
☐ Dismissed: ☐ WOP; ☐ WOPR
☐ Nolled/Discontinued

SENTENCE

MAGISTRATE

		DATE	INITIAL/No.
Search Warrant	Issued	12/18	Mag.Spain
	Return	12/19	
Summons	Issued		
	Served		
Arrest Warrant		XXXXXX	
COMPLAINT ▶		12/18	

INITIAL APPEARANCE — INITIAL/No.

PRELIMINARY EXAMINATION OR REMOVAL HEARING
Date Scheduled 12/29
Date Held
☐ Waived
☒ Not Waived
☐ Intervening Indictment

Tape No. — INITIAL/No.

OUTCOME
☐ Dismissed
☐ Held for District GJ
BOND ☐ Exonerated ☐ To Trial District
☐ Held to Answer to U. S. District Court
AT:
Magistrate's Initials ▶

OFFENSE (In Complaint): Schedule 2, Chapter 13, T21,USC. Manufacture of controlled sub

• Show last names and suffix numbers of other defendants on same indictment/information

DATE 1975	PROCEEDINGS	V. Excludable (a)	(b)
12/29	Filed Indictment		
12/29	Filed Search Warrant & Application; Mag. Temporary Commitment.		
12/29 ✓	Filed Bail Reform Act Form No. 2, Appearance Bond dated Dec. 20, Surety: Peerless Insurance Co.		
12/31	Filed Warrant of Arrest executed 12/19/75 & Complaint.		
1/5/76	The defendant is arraigned and pleads not guilty. Thirty days to file motions. Continued on bond.		
2/3/76 ✓	Filed letter extending time to File motions.		
2/24/76	Filed Extension of time to file motions.		
2/25/76	Filed Notice of Motion to consolidate Indictment with 76-CR-15 returnable March 15.		
3/1/76	Adjourned to March 15 by consent		
3/10 ✓	Filed Notice of Motion for order suppressing evidence, etc., returnable March 15 at Albany. Filed Supporting affidavit.		
3/15/76	Adjourned to April 5, 1976 by consent		
4/5/76 ✓	Filed Order signed by Judge Port exhonerating bail upon execution of bond.		

BEST COPY AVAILABLE

OPPOSITE THE APPLICABLE DOCKET ENTRY IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC §3161(h) – "SPEEDY TRIAL ACT".

DOCKET ENTRIES

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
/2/76	Filed Memorandum of Law and Affidavits.				
/5/76	Filed Affidavit in response to deft. Lazarski's Motion to Suppress Statements and Admissions.				
/5/76	Filed Order signed by Judge Foley granting motion for Independent analysis be granted.				
/5/76	Motion to controvert Search Warrant - Decision reserved. Motion for suppression-deferred until time of trial. Motion for an order dismissing Indictment-Denied. Motion for a Bill of Particulars-granted to extent furnished by gov't.otherwise denied. Motion for discovery - granted to extent furnished by govt. otherwise denied. Motion to reduce the amount of bail-granted. Motion for severance-granted. Motion to consolidated Indict. 75-CR-166 & 76-CR-15 by plaintiff-granted. Order to be submitted by gov't. covering all motions denied and granted.				
/6/76	Omnibus Hearing in re Motions to Controvert Search Warrant by defts., Reserved decision				
/14/76	Filed Appearance bond (Check for $2500.00) Surety Neil B. Winner.				
/16/76	Filed Joint Memorandum of Law.- defts.				
4/15/76	Filed Supplemental Memorandum of Law.				
/27/76	Filed Order signed by Judge Foley ordering alleged methaqualone delivered for analysis.				
4/30/76	Filed Memorandum-Decision and Order of Judge Foley denying and dismissing motions to suppress materials seized.				
May 3	The defendant withdraws plea of not guilty and pleads guilty to Count two. Presentence investigation ordered. Sentence deferred. Continued on bail.				
une 21	The court advised the defendant of his right to speak in his own behalf, deft. spoke, his attorney spoke. The deft. is adjudged a YAO under 18USC 4216(previously 18USC 4209) with the express finding the defendant will benefit from treatment under the FYCA. Deft. is sentenced under 18USC 5010(b) to the custody of the Atty. Gen. for treatment and supervision until discharged by the Youth Division under 18USC 5017(c), on Count two. Count one is dismissed on motion of Wm. J. Dreyer, AUSA. Sentence is stayed pending appeal on the denial of suppression motion. Continued on bail as previously.posted.				
une 23	Filed Judgment.				

(a) Interval (per Section II) — (b) Start Date / End Date — (c) Ltr Code — (d) Total Days

DOCKET ENTRIES

U.S. vs. LEE, YOK MOON

Day 29 | Mo. 12 | Yr. 75 | Docket No. 166 4

No. of Defendants: 4 — Defendant

Judge/Magistrate — Assigned Trial — Disp./Sentence

206 6 — District Office

CHARGES

U.S. Code Section	Offenses	Counts
21§841(a)(1)	Manufacturing Controlled substance	1
18 USC§2		
21§846	Conspiracy	2

MAGR. CASE NO. 23M 19

BAIL & RELEASE: ☐ Denied ☐ Personal R ☐ Unsecured ☐ Conditional Re — AMT Set (000) $ 25 — ☐ 10% ☒ Surety ☐ Collat — ☐ Bail Not Made ☐ Bail Status Changed (See Docket) — ☐ 3rd P Cust ☐ PSA

ATTORNEYS

U.S. Attorney or Asst.: WILLIAM DREYER, ASST.

Defense: ☐ CJA ☒ Ret. ☐ Waived ☐ Self ☐ None ☐ Other ☐ PD ☐ CD

E ~~STEWARD JONES CROXX~~
David S. Michaels
~~342 Madison Ave. NY~~

INTERVALS DATES

ARREST: 12/19 or U.S. Custody Began on Above Charges — ☐ High Risk Defn. & Date Design'd — ☐ Prosecution Deferred

INDICTMENT ☒ / Information ☐: 12/29 — Waived ☐ — Superseding ☐ Indict/Info ☐

ARRAIGNMENT: 1/5 — 1st Plea — " — Final Plea

Trial Set For — ☒ Not Guilty — ☐ Nolo ☐ Guilty — ☐ Not Guilty — ☐ Nolo ☐ Guilty

TRIAL: Voir Dire ☐ — Trial Began ☐ J ☐ N J — Trial Ended

Disposition: ☐ Convicted ☐ On All ☐ On Lesser Offense — ☐ Acquitted ☐ WOP; ☐ Dismissed ☐ Nolled/Discontinued*

SENTENC

MAGISTRATE

		DATE	INITIAL/No.
Search Warrant	Issued	12/18	Mag. Spain
	Return	12/19	
Summons	Issued		
	Served		
Arrest Warrant			
COMPLAINT ▷		12/18	

INITIAL APPEARANCE: 12/19 — INITIAL/No.

PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled 12/29 — Date Held —

☐ Waived ☒ Not Waived — ☐ Intervening Indictment

Tape No. — INITIAL/No.

OUTCOME: ☐ Dismissed — ☐ Held for District GJ — BOND ☐ Exonera ☐ To Tra District — ☐ Held to Answer to U. S. District Court — AT:

Magistrate's Initials ▶

OFFENSE (In Complaint): Schedule 2, Chapter 13, ~~MT~~21, USC, Manu. of Controlled Substance

* Show last names and suffix numbers of other defendants on same indictment/information

DATE	PROCEEDINGS
1975 12/29	Filed Indictment
12/29	Filed Search Warrant & Application; Magistrate's Temporary Commitment.
12/29	Filed Appearance Bond, dated Dec. 22, Surety: Peerless Insurance Co., Bail Reform Act Form No. 2.
12/31	Filed Complaint & Warrant of Arrest executed 12/19/75.
1/5/76	The defendant is arraigned and pleads not guilty. Thirty days to file motions. Continued on bond.
2/24/76	Filed Extension of time to file motions.
2/25/76	Filed Motion to consolidate Indictment with 76-CR-15, returnable 3/15/76.
3/1/76	Filed Notice of Motions, Affirmations, Affidavits and Demand for a Bill of Particulars returnable 3/15/76
3/1/76	Adjourned to March 15 by consent.
3/11/76	Filed Affirmation in Opposition to Consolidate Indictments.
3/11	Filed Motion to Reduce Bail of Deft. Yok Lee
3/15/76	Adjourned to April 5 by consent.
4/2/76	Filed Memorandum of Law and Affidavits.
4/5/76	Filed Affidavit in response to deft. Lazarski's Motion to Suppress statements and admissions.

V. Excludable D. (a) (b)

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE

DOCKET ENTRIES

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
4/5/76	Filed Order signed by Judge Foley granting motion for Independent analysis be granted.				
4/5/76	Motion to controvert Search Warrant - decision reserved. Motion to suppress evidence seized upon the arrest of deft. Lee-deferred to time of trial. Motion for severance-motion granted. Motion to inspect and dismiss the indictment-denied Motion to reduce the amount of bail-granted to the extent furnished by govt. otherwise denied. ~~Motion for severance-motion granted.~~				
	Motion to consolidate Indictment 75-CR-166 & 76-CR-15 by plaintiff-motion granted.				
	Motion for Bill of Particulars and discovery-granted to the extent furnished by govt. otherwise denied. Order to be submitted by government covering all motions denied and granted.				
4/6/76	Omnibus Hearing in re Motions to controvert Search Warrant by defendants. Reserved decision.				
4/7/76	Filed Order signed by Judge Foley exonerating bail ~~xxxx~~ set upon execution of bond.				
April 16	Filed Joint Memorandum of Law - defts.				
" 15	Filed Supplemental Memorandum of Law.				
" 27	Filed Order signed by Judge Foley ordering alleged methaqualone delivered for analysis.				
April 30	Filed Memorandum-Decision and Order of Judge Foley denying and dismissing motions to suppress materials seized.				
May 3	Filed Appearance Bond-$2500 in registry self surety.				
May 3	The defendant withdraws plea of not guilty and pleads guilty to Count two. Presentence investigation ordered. Sentence deferred without date. Continued on bail.				
June 17	Filed Defendant's Sentencing Memorandum.				
June 21	The court advised the deft. of his right to speak in his own behalf, deft. spoke, his attorney spoke. The deft. is adjudged a YAO under 18 USC4216(previously 18USC 4209) with the express finding the deft. will benefit from treatment under the FYCA The deft. is sentenced under 18USC 5010(b) to the custody of the Atty. Gen. for treatment and supervision until discharged by the Youth Division under 18USC 5017(c), on Count two. Count one dismissed on motion of Wm. J. Dreyer, AUSA. Sentence is stayed pending appeal on the denial of suppression motion. Continued on bail as previously posted.				
June 23	Filed Judgment.				

(a) Interval (per Section II) — (b) Start Date / End Date — (c) Ltr Code — (d) Total Days

DOCKET ENTRIES

U.S. DISTRICT COURT — CRIMINAL DOCKET

Felony ☒ JUDGE/MAGISTRATE Assigned Trial
Minor Offense ☐
Misdemeanor ☐
206 6 District Office Disp./Sentence

U.S. vs. McDONALD, MARK defendant

Day 4 Mo. 2 Yr. 76 Docket No. 15
No. of Defdnts 1

CHARGES

U.S. CODE SECTION	OFFENSES	COUNTS
21USC§§841(a)(1) & 846 18 USC §2	Manufacturing & Conspiracy to Manu. a controlled substance	2

MAGR. CASE NO.

BAIL ● RELEASE
☐ Denied ☒ Personal Rec. ☐ Unsecured
AMT Set (000) $ ☐ Conditional Rel.
☐ 10% D. ☐ Surety ☐ Collat.
date ☐ Bail Not Made ☐ Bail Status Changed (See Docket) ☐ 3rd Pty Custo. ☐ PSA

ATTORNEYS

U.S. Attorney or Asst.: William J. Dwyer

Defense: ☐ CJA, ☒ Ret., ☐ Waived, ☐ Self, ☐ None, ☐ Other, ☐ PD, ☐ CD
Paul Kietzman
=732 Madison Avenue, Albany

PROCEEDINGS

ARREST: ☐ or U.S. Custody Began on Above Charges; ☐ High Risk Defn. & Date Design'd; ☐ Prosecution Deferred

INDICTMENT ☒ Information ☐ 2/4/76; Waived ☐; Superseding ☐ Indict/Info ☐

ARRAIGNMENT: 2/13/76; 1st Plea; "; Final Plea 5/5

Trial Set For; " Not Guilty ☐ Nolo ☐ Guilty; Not Guilty ☐ Nolo ☒ Guilty

TRIAL: Voir Dire ☐; Trial Began ☐ J ☐ N; Trial Ended

Disposition: ☐ Convicted ☐ On All C. ☐ On Less. Offense; ☐ Acquitted; ☐ Dismissed: ☐ WOP; ☐; ☐ Nolled/Discontinued*

SENTENCE

		*DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.
Search Warrant	Issued				
	Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING	Date Scheduled
Summons	Issued				Date Held
	Served			☐ Waived ☐ Not Waived	☐ Intervening Indictment
Arrest Warrant					
COMPLAINT ▶				Tape No.	INITIAL/No.
OFFENSE (In Complaint)					

OUTCOME
☐ Dismissed
☐ Held for District GJ
BOND ☐ Exonerat. ☐ To Trans. District
☐ Held to Answer to U. S. District Court
AT:
Magistrate's Initials ▶

* Show last names and suffix numbers of other defendants on same indictment/information

V. Excludable Del. (a) (b) (c)

DATE	PROCEEDINGS
1976 Feb. 4,	Filed Indictment
2/13/76	Deft. is arraigned and pleads not guilty. Motions are made returnable March 1, 1976. Tobe filed by Feb. 25, 1976. Deft. is released on his own recognizance. Bail form is signed.
2/13/76	Filed Bail Reform Act Form
2/25/76	Filed Notice of Motion to consolidate Indictment with 75-CR-166, returnable March 15.
3/2/76	Call March 15, 1976
3/10/76	Filed Notice of Motions for order suppression evidence, returnable March 15. Filed supporting affidavit. Filed Motion for Bill of Particulars and for Discovery. Filed Affidavit in Opposition to Motion.
3/15/76	Adjourned to April 5 by consent.
4/2/76	Filed Memorandum of Law and affidavits.
4/5/76	Filed Affidavit in Response to Deft. Lazarski's motion to suppress statements and admissions.
4/5/76	Filed Order signed by Judge Foley granting motion for independent analysis of controlled substance.
4/5/76	Filed Affidavit of Mark McDonald.

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY[S] UNDER § 3161(h) "SPEEDY TRIAL ACT"

DOCKET ENTRIES

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a) (b) (c) (d)
4/5/76	Motion for an order controverting the search warrant, etc., by deft-decision reserved. Motion for suppression deferred to time of trial. Motion for order dismissing the indictment-denied. Motion for a Bill of Particulars and discovery by deft-granted to extent furnished by gov't. Motion to consolidate Indictments 75-CR-166 and 76-CR-15 by plaintiff granted. Order to be submitted by gov't. covering all motions denied and granted.	
4/6/76	Omnibus Hearing in re Motions to Controvert Search Warrant by Defts. Reserved Decision.	
4/16/76	Filed Joint Memorandum of Law-Defts.	
4/15/76	Filed Supplemental Memorandum of Law.	
4/27/76	Filed Order signed by Judge Foley ordering alleged methaqualone delivered for analysis.	
4/30/76	Filed Memorandum, Decision & Order of Judge Foley denying and dismissing motions to suppress materials seized pursuant to search warrant .	
5/5/76	The deft. withdraws plea of not guilty and pleads guilty to Count two. Presentence investigation is ordered. Sentence deferred. Continued on own recognizance.	
6/21/76 ✓	Filed Notice of Appeal	
6/21/76	The court advised the defendant of his right to speak in his own behalf, deft. spoke, his attorney spoke. The deft. is adjudged a Young Adult Offender under 18 USC 4216(previously 18 USC 4209) with the express finding the deft. will benefit from treatment under the FYCA. The deft. is sentenced under 18USC 5010(b) to the custody of the Attorney General for treatment and supervision until discharged by the Youth Division under 18USC 5017(c) on Count two. Count one is dismissed on motion of Wm. J. Dreyer, AUSA. Sentence is stayed pending appeal on the denial of suppression motion. Continued on bail as previously posted.	
6/23/76 ✓	Filed Judgement.	

(a) Interval (per Section II) — (b) Start Date / End Date — (c) Ltr. Code — (d) Total Days

A-12

SEARCH WARRANT

Form A O 93 (Rev. Apr. 1973) Search Warrant

United States District Court

FOR THE

NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

VS.

PETER M. LAZARSKI, CRAIG L. NEWMAN, and NEIL B. WINNER

Docket No. 1975

Case No. 18 M

SEARCH WARRANT

To Any Agent of the DRUG ENFORCEMENT ADMINISTRATION

Affidavit(s) having been made before me by Special Agent Raymond W. Tripp

that he has reason to believe that { ~~on the person of~~ / on the premises known as } 209 Wolf Road, Town of Colonie, New York, 12205, a white frame structure with attached garage and basement leased to one Peter M. Lazarski.

in the Northern District of New York

there is now being concealed certain property, namely (here describe property) a quantity of Methaqualone and / or Mecloqualone; quantities of ingredients used in the the manufacture of Methaqualone and/ or Mecloquqlone, to wit: Anthranilic Acid, N-Acetyl Anthranilic, acid, Ortho-Toluidine, Acetic Anhyadride, Phosphoryl Chloride, Polyphosphoric Acid, Acetic Acid, and various solvents and chemicals used in the chemical synthesis of Methaqualone and/or Mecloqualone; apparatus; paraphernalia; instrumentalities, and related items used in the manufacture of Methaqualone and/or Mecloqualone; papers, books, and records related to the manufacture and distribution of Methaqualone and/or Mecloqualone.

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of Ten Days (not to exceed 10 days) the person or place named for the property specified, serving this warrant and making the search { ~~in the daytime (6:00 A.M. to 10:00 P.M.)~~ / at any time in the day or night* } and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before a Federal Magistrate as required by law.

~~Federal judge or magistrate~~

Dated this 18th day of December, 1975

~~Judge~~ (Federal or State) or Federal Magistrate.

* *The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime." (Rule 41(c)). A statement of grounds for reasonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).

A-13

SEARCH WARRANT

RETURN

I received the attached search warrant December 18, 1975, and have executed it as follows:

On December 19, 1975 at 3.30 o'clock A M, I searched the person or premises described in the warrant and

I left a copy of the warrant with Peter LAZARSKI
~~name of person searched or owner~~ or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

See attached list of 80 items seized

This inventory was made in the presence of S/A Lon Sturrock

and J. Barbato, chemist DEA

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Raymond W Tripp

Subscribed and sworn to and returned before me this day of , 19 .

Federal Magistrate

FPI-LC 7-73-100M-7265

SEARCH WARRANT

PETER LAZARSKI
209 WOLF ROAD
ALBANY, N.Y.

INVENTORY LIST of SEIZED ITEMS
on 12/19/75 ~~taken~~ by S/A RAY TRIPP & J Brabante Chemist

1. 270 lbs of Anthranilic acid in garage
2. 7-5 gallons of Orthe Toludine in garage
3. 1-5 gal of ethly Acetate in ~~garage~~
4. 2-5 gal of methyl alcohol in garage
5. 1-5 gal of methylene chloride in garage
6. 2-5 gall tetraethylene Glycol Dimethyl ether
7. 1-5 gal 1-2 ~~ethylene~~ diol Ethanediol in garage
8. Chest of drawers in kitchen containing assorted thermometers of various grade, acid base paper, drying tubes, filter paper, assorted glaboratory ware, assoted pyrex beakers, ~~and~~ Erlenmeyer flasks, glass funnel, wire gauze & asbestos distillation apparatus including round bottom flask, condensers & assorted attachments, assorted heating mantels, assorted other used round bottom flasks
9. 12 drying screen frames located in kitchen
10. Kitchen cabinet under counter 1 gal of alcohol, assorted adapters and separators
11. In livingroom - small wooden box containing alleged methamphetamine in two glass amber bottles
12. one oxygen tank located in livingroom

SEARCH WARRANT

page 2

13. one water pipe ~~bent~~ containing residue located in livingroom

14. one hollow glass pipe containing residue located in livingroom

15. 1 bottle of piperonal

16. 1 bowl of dry Quaalude & pink cap containing powder located in livingroom

17. Triple Tiered drying rack containing powdery residue located in attic

18. assorted metal drying trays in attic

19. 1 gal can of ether in attic

20. 1 case of sodium metal in attic

21. 4 - 7 lb bottles nitric acid in attic

22 7 pint bottles ammonium Hydroxide in attic

23 4 bottles phosphorous tribromide in attic

24. 2 gal bottles alcohol in attic

25. 1 gal of acetic anhydride in attic

26. case of assorted empty bottles in attic

27. 1 cardboard drum of boiling chips in attic

28. 5 bottles of sulfuric acid & one bottle of hydrochloric acid in attic

29. Phenylacetonitrile (2 Kg) in attic

30 1 gal fuming sulfuric acid

31. 1 gal Acetic anhydride

32 1 case of assorted filter paper

} attic

SEARCH WARRANT

33. 2 - 12 round three neck round bottom flasks w/heating mantels
34. 1 case of assorted dry chemicals
35 1 - 5 lb bottle sodium cyanide
36 - 4 - 100 gram cans of Lithium Aluminum Hydride
37. 5 lb can of ether
38 1 vacuum dessicator
39 4 - 6 lb bottles of hydrochloric acid
40 Benzol chloride, formamide, phenylacetonitrile, phenylacetic acid & one case of assorted dry and liquid chemicals in attic
41 bottle of P2S in attic
42. 1 case of assorted liquid chemicals in attic
43. Chloro toluene 4 Kg in attic
44. Chloral Hydrate - attic
45 case of assorted liquid chemicals in attic
46 case of assorted metal chemical apparatus attic
47 1 bottle assorted dry chemicals
48 1 bottle 10 lb of mercury
49 1 case of assorted dry chemicals
50 1 box of misc rubber stoppers & funnels
51 1 case of assorted dry chemicals
52 1 box of assorted wet & dry chemicals
53 1 bottle of chromic acid
54 22 cases of glass ware, assorted sizes & functions

attic
attic
attic
in attic
in attic

SEARCH WARRANT

PAGE 4

55 one box of misc. lab equipment in attic

56 South east Bedroom

1 scale

57 2 - 60 centimeter condensers

58 1 loose leaf binder with notes re: chemical companies

59 1 ~~Case~~ of assorted catalogues of major chemical supply houses

In Southwest Bedroom

60 1 amber bottle of suspected marijuana

61 1 glass pipe w/residue

62 3 pabbies of notes re production of qualudes & cocaine & other substances

63 1 - 9mm Luger serial 4530 V

~~64~~ Basement

64 1 heating mantel & 2 round bottom glass reaction vessels with residue

65 two stands for supporting chemical equipment

66 8 - 5 lbs drums of phosphorus Trichloride empty

67 Two pillow cases filled with a powdery substance contained in plastic garbage pails

68 14 drying trays

69 assorted empty bottles of phosphorus Trichloride acetic anhydride & acetic acid

70 powerstat for heating mantel

SEARCH WARRANT

page 5

Basement continued

71. Stirring hot plate
72. 1 can of acetone
73. 1 partially used 110lb bag of sulfamic acid
74. 20 - 110lb bags of Sulfamic acid
75. 3 assorted heating mantels
76. Cup container of white colored ~~sugar~~ rocky substance
77. Three bags of washing soda (numerous bags left behind)
78. partial bottle of phosphorus Trichloride
79. 2 large plastic graduated cylinders
80. Batch mixing room of basement containing various vessels w/powdery residue & including 4 plastic garbage pails, one scale

AFFIDAVIT FOR SEARCH WARRANT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

PETER M. LAZARSKI, CRAIG L. NEWMAN, and NEIL B. WINNER,

Defendants.

AFFIDAVIT FOR SEARCH WARRANT

STATE OF NEW YORK)
) ss/
COUNTY OF ALBANY)

Before U.S. Magistrate John Spain
50 Second Street
Troy, New York 12180

RAYMOND W. TRIPP, being duly sworn deposes and says:

1. That he is a Special Agent of the United States Department of Justice, Drug Enforcement Administration, Albany, New York:

2. That he has reason to believe that on the premises known as 209 Wolf Road, Town of Colonie, New York, 12205, a white frame structure with attached garage and basement, the said premises being listed to one PETER M. LAZARSKI, and located in the Northern District of New York, there is now being concealed certain property, namely, a quantity of Methaqualone and/or Mecloqualone, controlled substances listed in Schedule 2, Chapter 13, Title 21, United States Code: quantities of ingredients used in the manufacture of Methaqualone and/or Mecloqualone, to wit: Anthranilic Acid, N-Acetyl Anthranilic Acid, Ortho-Toluidine, Acetic Anhyadride, Phosphoryl Chloride, Polyphosphoric Acid, Acetic Acid, and various solvents and chemicals used in the chemical synthesis of Methaqualone and/or Mecloqualone;

apparatus; paraphernalia; instrumentalities, and related items used in the manufacture of Methaqualone and/or Mecloqualone; papers, books, and records related to the manufacture and distribution of Methaqualone and/or Mecloqualone: which items are:

(a) Controlled substances listed in Schedule 2, Chapter 13, Title 21, United States Code, of which the manufacture or possession with intent to distribute is prohibited by Title 21, United States Code, Section 841 (a)(1);

(b) Ingredients used in the unlawful manufacture or attempt to manufacture the above-named controlled substances; and

(c) Instrumentalities of the unlawful manufacture or attempted manufacture of the said substances.

3. That the facts attempting to establish the foregoing grounds for issuance of a search warrant are as follows.

(a) On December 11, 1975, at approximately 1:30 p.m., Special Agent William T. Healey, United States Department of Justice, Drug Enforcement Administration, Newark, New Jersey, posing as an employee of the BASF Wyandotte Corporation, a chemical supply house in Newark, New Jersey, assisted in loading 20 bags of Anthranilic Acid, each bag weighing 110 lbs., from a warehouse located at Clipper Street, Port of Newark, into a Hertz rental truck bearing New York license 8106GA, and which was operated by CRAIG L. NEWMAN who was accompanied by an unidentified individual. The purchase order of the

AFFIDAVIT FOR SEARCH WARRANT

BASF Wyandotte Corporation, a copy of which is attached hereto as Exhibit A, shows that the order was placed by or billed to the Wilmington Farm Co-op, 10 Bryant Hill Road, Wilmington, Vermont.

(b) On December 11, 1975, Special Agents Healey, O'Brien, Crovetti, Russmano, Bryostowski, and others, Agents of the Drug Enforcement Administration, conducted a moving surveillance of the aforementioned Hertz truck and followed it from the Port of Newark to 209 Wolf Road, Town of Colonie, New York.

(c) Upon arrival of the truck at 209 Wolf Road, your affiant and other agents previously named in sub-paragraph 3(b), observed the aforementioned bags of Anthranilic Acid being unloaded into the garage at 209 Wolf Road, and, further observed Craig Newman and an unidentified individual return the truck to a Hertz Rental Agency at Troy, New York.

(d) On December 11, 1975, while on surveillance, Agent Bryostowski observed the house at 209 Wolf Road and observed the name LAZARSKI on the house.

(e) On December 11, 1975, while on surveillance at 209 Wolf Road, your affiant observed an Opel GT, New York license 688RPX arrive at 209 Wolf Road. An official check with the Department of Motor Vehicles, State of New York, showed that the aforementioned Opel GT is registered to NEIL WINNER, 5 Washington Place, Troy, New York.

AFFIDAVIT FOR SEARCH WARRANT

(f) On December 12, 1975, your affiant observed that certain windows at 209 Wolf Road are boarded up and that other windows are covered by either cardboard or closed venetian blinds.

(g) Between December 12, 1975, and today, Paul DeZan, Chemist, United States Department of Justice, Drug Enforcement Administration, Northeast Regional Laboratory, New York City, advised Special Agent Lon W. Sturrock that:

(1) Anthranilic Acid is a precursor to Methaqualone and/or Mecloqualone; that is, Anthranilic Acid is combined with Acetic Acid or Acetic Anhydride to produce Acetyl-Anthranilic Acid which when combined with Ortho-Toluidine and Chloryl Chloride and heat is applied, produces Methaqualone. Ortho-Chloroaniline and a reagent can be combined with Acetyl Anthacilic Acid (a similar process to produce Methaqualone.

(2) That, besides the manufacture of Methaqualone and Mecloqualone, the only other uses for Anthranilic Acid is in the manufacture of analgesic drugs and certain veterinary products.

(h) On the 7th of July, 1975, the Wilmington Farm Co-op, Wilmington, Vermont, placed an order for 440 lbs. of Anthranilic Acid and said order was paid for by a personal money order signed by James Ewing, Wilmington Farm Co-op, Bryant Hill Road, Wilmington, Vermont. Exhibit B attached hereto contains copies of the purchase order and personal money order used in the purchase of the 440 lbs. of Anthranilic Acid.

(i) On December 18, 1975, Richard Pratt, Chief of the Wilmington Police Department advised your affiant that there is no record of a Wilmington Farm

Co-op, a Bryant Hill Road, or a James Ewing in Wilmington, Vermont; and your affiant further determined from telephone authorities in the Vermont District that the telephone number that appears on Exhibit B, purchase order, is fictitious and false.

(j) On December 15, 1975, pursuant to a subpoena of the Drug Enforcement Administration, telephone toll receipts were obtained from the New York Telephone Company for phone numbers in the names of PETER M. LAZARSKI, CRAIG L. NEWMAN, and NEIL WINNER, and reflected as follows:

(1) Phone number 458-1873, in the name of PETER LAZARSKI, three telephone calls were placed to the SGA Scientific Supply Company, Bloomfield, New Jersey on November 4, 5, and 21, 1975, and one phone call to Conso Lab Supply Company, Westbury, New York on November 21, 1975.

(2) From telephone number 271-8095, in the name of Neil Winner, calls were placed at Anachemia Chemicals, Inc., Champlain, New York, at Albaniel Dye and Chemical Company, and Dye Stuff Company, Jersey City, New Jersey, Atlantic Chemical Company, Nutley, New Jersey and the Sandoz Pharmaceutical and Chemical Company, Whippany, New Jersey, and the said telephone calls being placed on July 16, 18, and 25, 1975.

(3) From telephone number 276-6077 in the name of CRAIG NEWMAN, phone calls were placed to the Conso Lab Supply Company on June 22, and 23, 1975, and July 7, 10, and 16 and 25, 1975.

AFFIDAVIT FOR SEARCH WARRANT

(k) On December 17, 1975, your affiant was advised that Paul Sennett, Special Agent, Drug Enforcement Administration, contacted Conso Lab Supply Company and determined that Craig Newman obtained four kilos of Anthranilic Acid in May, 1975, and 56 lbs. of Acetic Acid during June of 1975, and that on either July 18 or August 19, 1975, CRAIG NEWMAN picked up quantities of Ether, Sodium, Sodium Acetate, and Acetic Anhydride, and further, ordered 48 kilos of Ortho-Toluidine in June, 1975, the said substances not being picked up because it was back ordered by the company.

(l) That PETER LAZARSKI is a chemical technician at the Hudson Valley Community College.

(m) That surveillance through this day reflects that the quantity of Anthranilic Acid delivered to 209 Wolf Road has not been removed from the garage or house.

(n) That a night-day search warrant should issue, based on the foregoing, due to the moveable nature of precursors, manufactured controlled substances and laboratory apparatus used for the manufacture of said controlled substances.

Dated: December 18, 1975
Albany, New York

_____
RAYMOND W. TRIPP

Sworn to before me this
_____day of_____, 1975

_____
NOTARY PUBLIC

EXHIBIT A TO AFFIDAVIT FOR SEARCH WARRANT - PURCHASE ORDER OF BASF WYANDOTTE CORPORATION AND CASHIER'S CHECK PAYABLE TO BASF WYANDOTTE CO.

BASF

BASF Wyandotte Corporation

SOLD TO	SALESMAN	SHIP TO	TERM	CUSTOMER ORDER NO
056803	221267			VERBAL

12/9 2:2:

TAX CODE	SHIPPED VIA	SCHED. SHIP DATE	LOC.
014530	CPU		7045

'75 DEC -9 PM 2:43

CPU

SHIP TO & BILL TO (IF SAME) THURSDAY 12/11
EARLY AFTERNOON

DATE SHIPPED

BILL TO (IF DIFFERENT) WILMINGTON FARM COOP
10 BRYANT HILL RD
WILMINGTON, VT

ROUTE RL 31130

NO.	PRODUCT NO.	COMM CODE	DESCRIPTION	PKG NET WGT.	LOT NUMBER	GROSS LBS.	TARE LBS.	NET LBS.	UNIT PRICE AMOUNT
020	021041	354	ANTHRANILIC ACID	110#	7610527 03452	2300	100	2200	
		M	C.O.D. $2860.00		DC-4 DF-3				

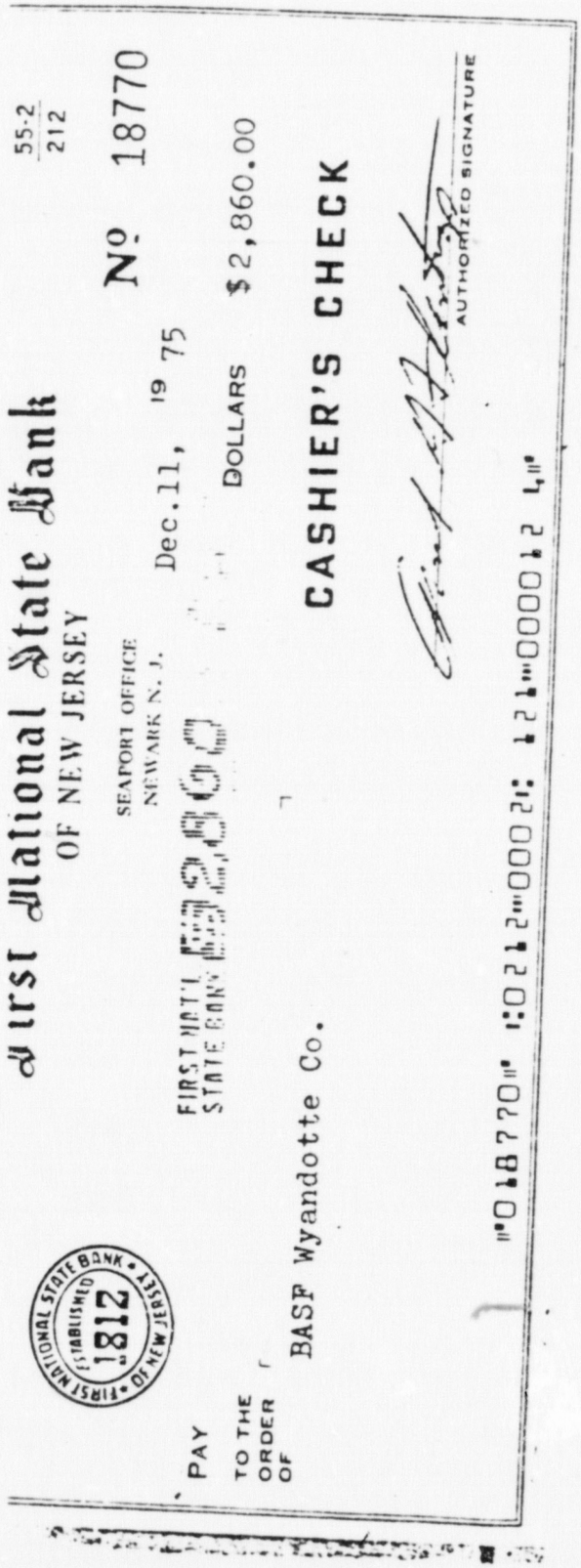
SPECIAL INSTRUCTIONS:

CALL SHARON GINSBERG AT TIME OF PICKUP

TRUCKER Hesty
NAME Cecil Hearn
PLATE # XGL 69Y
DATE 12/11/75
AMOUNT 20

WAREHOUSE COPY

EXHIBIT A TO AFFIDAVIT FOR SEARCH WARRANT - PURCHASE ORDER OF BASF WYANDOTTE CORPORATION AND CASHIER'S CHECK PAYABLE TO BASF WYANDOTTE CO.



First National State Bank
OF NEW JERSEY

SEAPORT OFFICE
NEWARK N. J.

55-2
212

No. 18770

Dec. 11, 19 75

FIRST NATL. BANK OF NEW JERSEY
STATE BANK

DOLLARS $2,860.00

CASHIER'S CHECK

PAY
TO THE
ORDER
OF BASF Wyandotte Co.

AUTHORIZED SIGNATURE

FIRST NATIONAL STATE BANK • FIRST STATE BANK OF NEW JERSEY • ESTABLISHED 1812

"018770" :021200000: 12 4"

EXHIBIT B TO AFFIDAVIT FOR SEARCH WARRANT - PURCHASE ORDER OF BASF WYANDOTTE CORPORATION, BILL OF LADING, AND PERSONAL MONEY ORDERS PAYABLE TO BASF WYANDOTTE

Wyandotte Corporation

7/1/75 ✓7

#	Mkt. SLS	Ship To #	Term	Cust. Order #	Tax Code	Shipped Via
	221267			Verbal		CPU

Date	Loc.	Release #
		RL

SHIP TO & BILL TO (If Some): Customer Pick up - Warehouse Monday 7/7/75

SOLD TO (If Different): Wilmington Farm Coop
Bryant Hill Road
Wilmington, Vermont

No price change

PRODUCT NO.	DESCRIPTION	No. of Pkgs	DRUM NO.	GROSS LBS.	TARE LBS.	NET LBS.	Unit Price / Amount
021041	Anthranilic Acid	2	X 110 # 761-0463		220 #		1.30/#
		4	X 55 # 761-1216		220	440 #	

Fib
mg white

Tel call

RDL-
JFF
cc JS
CF

COD

Sg

Certified Check
or pick up only

phone

James Ewing
(802) 254-6002

BLANKET CREDIT CHECK	INITIALS	DATE	CREDIT DEPT. CHECK	INITIALS	DATE
	SL	7/1/75			

EXHIBIT B TO AFFIDAVIT FOR SEARCH WARRANT - PURCHASE ORDER OF BASF WYANDOTTE CORPORATION, BILL OF LADING, AND PERSONAL MONEY ORDERS PAYABLE TO BASF WYANDOTTE

ORIGINAL—NOT NEGOTIABLE **STRAIGHT BILL OF LADING—SHORT FORM**

Carrier's No. _____

CPU (Name of Carrier)

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading

(ALL RETURNS SHOULD BE MADE TO THE SHIPPED FROM LOCATION INDICATED BELOW.)

CUSTOMER ORDER NO. [redacted]

FROM: BASF WYANDOTTE CORP.
BLDG. 2220
PORT ELIZABETH, NJ 08348

CAR OR VEHICLE INIT. _____ NO. _____

SHIP TO WILMINGTON FARM COOP
BRYANT HILL ROAD
WILMINGTON, VERMONT

DATE SHIPPED 7/2

C.O.D. SHIPMENTS

AMOUNT	COLLECT FEE	TOTAL CHARGE
$	$	$

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding:

$ 50 LB.

ROUTE

CARRIER: REFER TO THIS NUMBER ON FREIGHT BILL

BL 30504

NO. PKGS.	PRODUCT NO.	COMM. CODE	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	LOT NUMBER	* WEIGHT (SUBJ. TO CORR.)	CLASS OR RATE	CHECK COL.
001	D.T041	354	REFER TO INDICATED COMMODITY NUMBER AND CODE LISTING BELOW	[illegible]	222		
			C O D CHECK CERTIFIED CHECK ON PICK UP	62507			
001	D.T041	354		6111816 [illegible]	224		
			Personal M.O #155237 #155238				

Subject to Section 7 of conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

AT

(SIGNATURE OF CONSIGNOR)

If charges are to be prepaid, write or stamp here: "To be Prepaid."

IF NOT A MEMBER OF A BANK PAYMENT PLAN

MAIL PREPAID FREIGHT BILLS TO:
BASF WYANDOTTE CORPORATION
P.O. BOX 181
PARSIPPANY, NEW JERSEY 07054

Received $ _____

to apply in prepayment of the charges on the property described hereon.

AGENT OR CASHIER

Per _____

(THE SIGNATURE HERE ACKNOWLEDGES ONLY THE AMT. PREPAID.)

* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

350	PLASTICS, SYNTHETIC, LIQUID, NOIBN	416	DYES OR COLORS, COAL TAR, O/T INDIGO (SEE NOTE)	COMM. CODE	DESCRIPTIONS OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS
351	PLASTIC MATERIAL O/T EXPANDED, FLAKES, GRANULES, PELLETS, POWDER, NOIBN	417	PAINTS, COLD WATER	423	PHTHALIC ANHYDRIDE
354	CHEMICALS NOI (SEE NOTE)	418	COMPOUNDS, PAINT, LACQUER OR VARNISH REMOVING OR THINNING		
370	CLEANING COMPOUND, LIQUID	419	EXTRACTS, TANNING, NATURAL OR SYNTHETIC		
371	CLEANING COMPOUND, OTHER THAN LIQUID	420	COMPOUND, LEATHER FURN. SHING, SOFTENING, SIZING OR STUFFING		
386	TEXTILE (COTTON) SOFTENER, NOI	421	SIZING, NOI		
415	PAINTS, LACQUERS OR VARNISHES, NOI	422	PLASTICIZERS OR SOLVENTS		

THE PAPER BAGS, AND ALSO FIBRE BARRELS, BOXES OR DRUMS, USED FOR THIS SHIPMENT CONFORM TO THE SPECIFICATIONS SET FORTH IN THE BARREL, BOX OR DRUM MAKER'S CERTIFICATE THEREON, AND ALL OTHER REQUIREMENTS OF UNIFORM FREIGHT CLASSIFICATION OR NATIONAL MOTOR FREIGHT CLASSIFICATION.

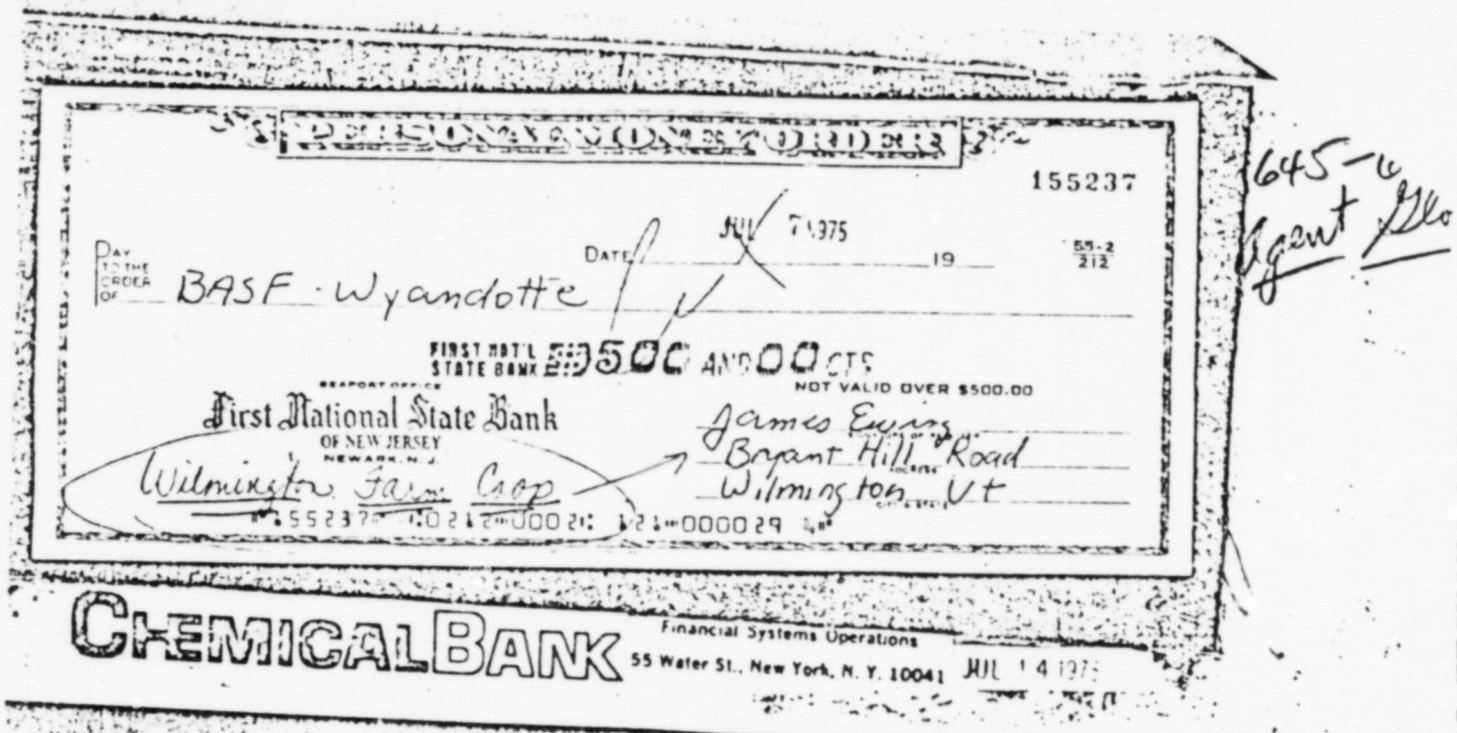
THE DESCRIPTION AND WEIGHT INDICATED ON THIS BILL OF LADING ARE CORRECT (SUBJECT TO VERIFICATION BY THE GOVERNING WEIGHING AND INSPECTION BUREAU ACCORDING TO AGREEMENT.)

THIS IS TO CERTIFY THAT THE ABOVE NAMED ARTICLES ARE PROPERLY CLASSIFIED, DESCRIBED, PACKAGED, MARKED AND LABELED AND ARE IN PROPER CONDITION FOR TRANSPORTATION ACCORDING TO THE APPLICABLE REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION.

BASF WYANDOTTE CORPORATION
PERMANENT POST OFFICE ADDRESS OF SHIPPER
P.O. BOX 181, PARSIPPANY, NJ 07054

SHIPPER, PER D James Ewing AGENT, PER _____

EXHIBIT B TO AFFIDAVIT FOR SEARCH WARRANT - PURCHASE ORDER OF BASF WYANDOTTE CORPORATION, BILL OF LADING, AND PERSONAL MONEY ORDERS PAYABLE TO BASF WYANDOTTE



PERSONAL MONEY ORDER

155237

645-6
Grant Ellis

JUL 7 1975

PAY TO THE ORDER OF BASF - Wyandotte

DATE ____ 19 ____ 55-2 212

FIRST NAT'L STATE BANK $ 500 AND 00 CTS

NOT VALID OVER $500.00

First National State Bank
OF NEW JERSEY
NEWARK, N.J.

Wilmington Farm Coop

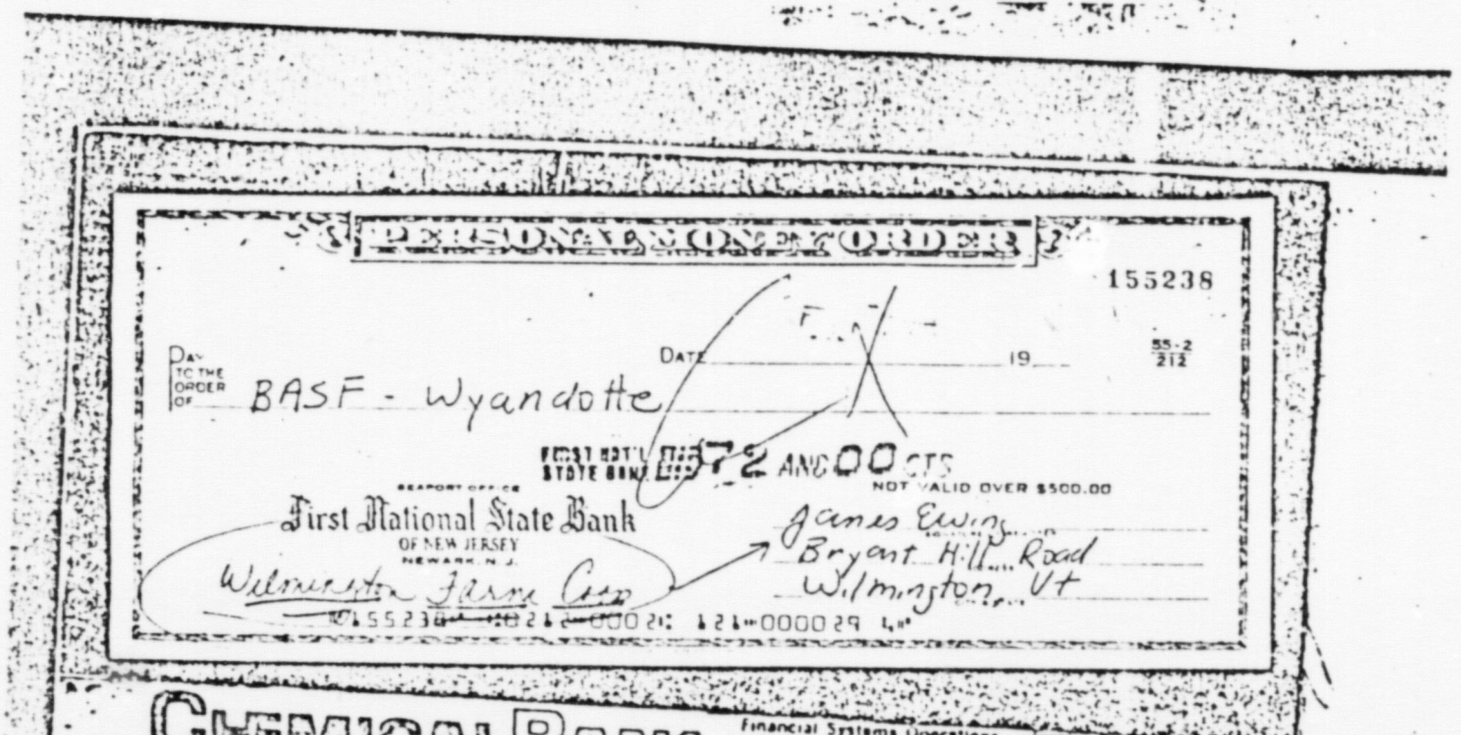
James Ewing
Bryant Hill Road
Wilmington Vt

⑈155237⑈ ⑆021200021⑆ 121-000029 4⑈

CHEMICAL BANK

Financial Systems Operations
55 Water St., New York, N. Y. 10041

JUL 14 1975



PERSONAL MONEY ORDER

155238

PAY TO THE ORDER OF BASF - Wyandotte

DATE ____ 19 ____ 55-2 212

FIRST NAT'L STATE BANK $ 72 AND 00 CTS

NOT VALID OVER $500.00

First National State Bank
OF NEW JERSEY
NEWARK, N.J.

Wilmington Farm Coop

James Ewing
Bryant Hill Road
Wilmington Vt

⑈155238⑈ ⑆021200021⑆ 121-000029 4⑈

CHEMICAL BANK

Financial Systems Operations
55 Water St., New York, N. Y. 10041

JUL 14 1975

INDICTMENT, CR. NO. 75-CR-166
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

75-CR-166

vs.

INDICTMENT

Cr. No. 75-CR-166

PETER M. LAZARSKI,
CRAIG L. NEWMAN,
NEIL B. WINNER, and
YOK LEE

(VIO: Title 21, U.S.C., Sections 841(a)(1) and 846 and Title 18, U.S.C., Section 2)

COUNT I

THE GRAND JURY CHARGES:

That on or about the 19th day of December, 1975, at or near Colonie, in the State and Northern District of New York, PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, and YOK LEE, the defendants herein, did wilfully, knowingly, and unlawfully manufacture a controlled substance as set forth in Schedule II of Subchapter I of Title 21, United States Code, Chapter 13, that is, approximately eighty (80) pounds of methaqualone.

In violation of Title 21, United States Code, Section 841(a)(1); Title 18, United States Code, Section 2.

COUNT II

THE GRAND JURY FURTHER CHARGES:

That from on or about December 11, 1975, until on or about December 19, 1975, at or near Colonie, in the State and Northern District of New York, PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, and YOK LEE, the defendants herein, did wilfully, knowingly and unlawfully combine, conspire, confederate and agree together and with each other, to commit an offense

against the United States, to wit: to violate Title 21, United States Code, Section 841(a)(1).

It was part of the said conspiracy that the said defendants would knowingly, wilfully, and unlawfully manufacture and distribute a controlled substance as set forth in Schedule II of Subchapter I of Title 21, United States Code, Chapter 13, to wit: a quantity of methaqualone, in violation of the law.

That in furtherance of the aforesaid combination, conspiracy and agreement and to effect the objectives thereof, the defendants at the times and places hereinafter described did do and perform the following overt acts:

OVERT ACTS

1. That on or about the 11th day of December, 1975, CRAIG L. NEWMAN and YOK LEE, defendants herein, obtained from and at the BASF Wyandotte Corporation, Newark, New Jersey, 2,200 pounds of anthranilic acid and delivered by truck the said anthranilic acid to 209 Wolf Road, Town of Colonie, in the State and Northern District of New York, the said address being a private dwelling rented and occupied by PETER M. LAZARSKI, a defendant herein.

2. That on or about the 11th day of December, 1975, PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, and YOK LEE, met at Colonie, New York.

3. That from on or about the 11th day of December, 1975, to on or about the 19th day of December, 1975, PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, and YOK LEE, the defendants

herein, manufactured approximately eighty (80) pounds of methaqualone.

4. That on or about the 19th day of December, 1975, at Colonie, New York, PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, and YOK LEE, the defendants herein were in possession of eighty pounds of methaqualone.

In violation of Title 21, United States Code, Section 846.

A TRUE BILL

FOREMAN

James M. Fullman Jr
UNITED STATES ATTORNEY

INDICTMENT, CR. NO. 75-CR-166

Peter M. Lazarski 75-CR-166 WJD E. Stewart Jones, Jr.
The court advised the defendant of his right to speak in his own behalf, defendant spoke, his attorney spoke. The defendant is adjudged a Young Adult Offender under 18 USC 4216 (previously 18 USC 4209) with the express finding the defendant will benefit from treatment under the Federal Youth Corrections Act. The defendant is sentenced under 18 USC 5010(b) to the custody of the Attorney General for treatment and supervision until discharged by the Youth Division under 18 USC 5017(c), on Count two. Count one dismissed on motion of William J. Dreyer, Assistant U. S. Attorney. Sentence is stayed pending appeal on the denial of suppression motions. Continued on bail as previously posted.

Craig L. Newman 75-CR-166 WJD Donald Shanley
The court advised the defendant of his right to speak in his own behalf, defendant spoke, his attorney spoke. The defendant is adjudged a Young Adult Offender under 18 USC 4216 (previously 18 USC 4209) with the express finding the defendant will benefit from treatment under the Federal Youth Corrections Act. The defendant is sentenced under 18 USC 5010(b) to the custody of the Attorney General for treatment and supervision until discharged by the Youth Division under 18 USC 5017(c), on Count two. Count one dismissed on motion of William J. Dreyer, Assistant U. S. Attorney. Sentence is stayed pending appeal on the denial of suppression motion. Continued on bail as previously posted.

Neil B. Winner 75-CR-166 WJD Paul E. Cheeseman
The court advised the defendant of his right to speak in his own behalf, defendant spoke, his attorney spoke. The defendant is adjudged a Young Adult Offender under 18 USC 4216 (previously 18 USC 4209) with the express finding the defendant will benefit from treatment under the Federal Youth Corrections Act. The defendant is sentenced under 18 USC 5010(b) to the custody of the Attorney General for treatment and supervision until discharged by the Youth Division under 18 USC 5017(c), on Count two. Count one dismissed on motion of William J. Dreyer, Assistant U. S. Attorney. Sentence is stayed pending appeal on the denial of suppression motion. Continued on bail as previously posted.

Yok Lee 75-CR-166 WJD David S. Michaels
The court advised the defendant of his right to speak in his own behalf, defendant spoke, his attorney spoke. The defendant is adjudged a Young Adult Offender under 18 USC 4216 (previously 18 USC 4209) with the express finding the defendant will benefit from treatment under the Federal Youth Corrections Act. The defendant is sentenced under 18 USC 5010(b) to the custody of the Attorney General for treatment and supervision until discharged by the Youth Division under 18 USC 5017(c), on Count two. Count one dismissed on motion of William J. Dreyer, Assistant U. S. Attorney. Sentence is stayed pending appeal on the denial of suppression motion. Continued on bail as previously posted.

INDICTMENT, CR. NO. 76-CR-15

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

MARK MC DONALD

INDICTMENT

Cr. No. 76-CR- 15

(VIO: Title 21, U.S.C., Sections 841(a)(1) and 846 and Title 18, U.S.C., Section 2)

COUNT I

THE GRAND JURY CHARGES:

That on or about the 19th day of December, 1975, at or near Colonie, in the State and Northern District of New York, MARK MC DONALD, the defendant herein, and PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, and YOK LEE, named but not charged as defendants herein, did wilfully, knowingly, and unlawfully manufacture a controlled substance as set forth in Schedule II of Subchapter I of Title 21, United States Code, Chapter 13, that is, approximately eighty (80) pounds of methaqualone.

In violation of Title 21, United States Code, Section 841 (a)(1); Title 18, United States Code, Section 2.

COUNT II

THE GRAND JURY FURTHER CHARGES:

That from on or about December 11, 1975, until on or about December 19, 1975, at or near Colonie, in the State and Northern District of New York, MARK MC DONALD, defendant herein, and PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, and YOK LEE, co-conspirators not charged as the defendants herein, did wilfully, knowingly and unlawfully combine, conspire, confederate and agree together and with each other, to commit an offense against the United States, to wit: to violate Title 21, United States Code, Section 841(a)(1).

It was part of the said conspiracy that the said defendants would knowingly, wilfully, and unlawfully manufacture and distribute a controlled substance as set forth in Schedule II of Subchapter I of Title 21, United States Code, Chapter 13, to wit: a quantity of methaqualone, in violation of the law.

That in furtherance of the aforesaid combination, conspiracy and agreement and to effect the objectives thereof, the defendants at the times and places hereinafter described did do and perform the following overt acts:

OVERT ACTS

1. That on or about the 11th day of December, 1975, CRAIG L. NEWMAN and YOK LEE, conspirators herein, obtained from and at the BASF Wyandotte Corporation, Newark, New Jersey, 2,200 pounds of anthranilic acid and delivered by truck the said anthranilic acid to 209 Wolf Road, Town of Colonie, in the State and Northern District of New York, the said address being a private dwelling rented and occupied by PETER M. LAZARSKI, a co-conspirator.

2. That on or about the 11th day of December, 1975, PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, and YOK LEE, met at Colonie, New York.

3. That from on or about the 11th day of December, 1975, to on or about the 19th day of December, 1975, MARK MC DONALD, the defendant herein, and PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, and YOK LEE, co-conspirators, herein, manufactured approximately eighty (80) pounds of methaqualone.

4. That on or about the 19th day of December, 1975, at Colonie, New York, MARK MC DONALD, the defendant herein, and PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, and YOK LEE, co-conspirators herein, were in possession of eighty pounds of methaqualone.

INDICTMENT, CR. NO. 76-CR-15

In violation of Title 21, United States Code, Section 846.

A TRUE BILL

FOREMAN

UNITED STATES ATTORNEY

INDICTMENT, CR. NO. 76-CR-15

6/21/76 The Court advised the defendant of his right to speak in his own behalf, defendant spoke, his attorney spoke, The defendant is adjudged a Young Adult Offender under 18 USC 4216 (previously 18 USC 4209) with the express finding the defendant will benefit from treatment under the Federal Youth Corrections Act. The defendant is sentenced under 18 USC 5010(b) to the custody of the Attorney General for treatment and supervision until discharged by the Youth Division under 18USC 5017(c), on Count two. Count one dismissed on motion of William J. Dreyer, Assistant U.S. Attorney. Sentence is stayed pending appeal on the denial of suppression motion. Contined on bail as previously posted.

INDICTMENT, CR. NO. 76-CR-15

6/21/76 Peter M. Lazarski 75-CR-166 WJD E. Stewart Jones, Jr.
The court advised the defendant of his right to speak in his own behalf, defendant spoke, his attorney spoke. The defendant is adjudged a Young Adult Offender under 18 USC 4216 (previously 18 USC 4209) with the express finding the defendant will benefit from treatment under the Federal Youth Corrections Act. The defendant is sentenced under 18 USC 5010(b) to the custody of the Attorney General for treatment and supervision until discharged by the Youth Division under 18 USC 5017(c), on Count two. Count one dismissed on motion of William J. Dreyer, Assistant U. S. Attorney. Sentence is stayed pending appeal on the denial of suppression motions. Continued on bail as previously posted.

6/21/76 Craig L. Newman 75-CR-166 WJD Donald Shanley
The court advised the defendant of his right to speak in his own behalf, defendant spoke, his attorney spoke. The defendant is adjudged a Young Adult Offender under 18 USC 4216 (previously 18 USC 4209) with the express finding the defendant will benefit from treatment under the Federal Youth Corrections Act. The defendant is sentenced under 18 USC 5010(b) to the custody of the Attorney General for treatment and supervision until discharged by the Youth Division under 18 USC 5017(c), on Count two. Count one dismissed on motion of William J. Dreyer, Assistant U. S. Attorney. Sentence is stayed pending appeal on the denial of suppression motion. Continued on bail as previously posted.

6/21 Neil B. Winner 75-CR-166 WJD Paul E. Cheeseman
The court advised the defendant of his right to speak in his own behalf, defendant spoke, his attorney spoke. The defendant is adjudged a Young Adult Offender under 18 USC 4216 (previously 18 USC 4209) with the express finding the defendant will benefit from treatment under the Federal Youth Corrections Act. The defendant is sentenced under 18 USC 5010(b) to the custody of the Attorney General for treatment and supervision until discharged by the Youth Division under 18 USC 5017(c), on Count two. Count one dismissed on motion of William J. Dreyer, Assistant U. S. Attorney. Sentence is stayed pending appeal on the denial of suppression motion. Continued on bail as previously posted.

6/21 Yok Lee 75-CR-166 WJD David S. Michaels
The court advised the defendant of his right to speak in his own behalf, defendant spoke, his attorney spoke. The defendant is adjudged a Young Adult Offender under 18 USC 4216 (previously 18 USC 4209) with the express finding the defendant will benefit from treatment under the Federal Youth Corrections Act. The defendant is sentenced under 18 USC 5010(b) to the custody of the Attorney General for treatment and supervision until discharged by the Youth Division under 18 USC 5017(c), on Count two. Count one dismissed on motion of William J. Dreyer, Assistant U. S. Attorney. Sentence is stayed pending appeal on the denial of suppression motion. Continued on bail as previously posted.

NOTICE OF MOTIONS OF DEFENDANT LEE

UNITED STATES DISTRICT COURT
NORTHERN DIST CT OF NEW YORK

UNITED STATES OF AMERICA — Indictment No. 75 CR 166

-against- — NOTICE OF MOTIONS

PETER M. LAZARSKI,
CRAIG L. NEWMAN,
NEIL B. WINNER, and
YOK LEE

S I R :

PLEASE TAKE NOTICE, that upon the indictment herein, the motions, annexed affirmations of counsel, the annexed affidavit of the defendant Yok Lee, and upon the annexed exhibit, and all prior proceedings had herein, the defendant Yok Lee, will move this Court, before the Hon. James T. Foley, at the United States Courthouse, United States Post Office Building, Albany, New York, on the 15th day of March, 1976, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard:

1. For an order, pursuant to Rule 41(f) of the Federal Rules of Criminal Procedure, controverting the search warrant herein and directing the suppression of evidence seized

thereunder, as well as leads and information disclosed, directly or indirectly, thereby.

2. For an order, pursuant to Rule 41(f) of the Federal Rules of Criminal Procedure, directing the suppression of that portion of the Government's proof as may be found, after a hearing, to have been obtained by unlawful search and seizure upon the arrest of defendant Yok Lee.

3. For an order, pursuant to Rule 14 of the Federal Rules of Criminal Procedure, directing severance of all further proceedings in prosecution of the other defendants herein, and most particularly from defendant Lazarski.

4. For an order, pursuant to Rules 7 and 12 of the Federal Rules of Criminal Procedure, directing, after an in camera inspection of grand jury minutes by the Court, that the indictment herein as against defendant Yok Lee be dismissed.

5. For an order reducing the amount of bail for the defendant Yok Lee and establishing parole or such conditions and amount of bail and/or personal recognizance bond as the Court may deem reasonable and appropriate.

6. For an order, pursuant to Rules 7(f) and 16 (A)(1) of the Federal Rules of Civil Procedure, directing that the

NOTICE OF MOTIONS OF DEFENDANT LEE

Government file and serve upon counsel for defendant Yok Lee a Bill of Particulars herein and further directing the Government to allow discovery and make disclosure as to the items specifically requested by counsel for defendant Yok Lee.

Dated: New York, New York
February 26,1976

Yours, etc.,

DAVID S. MICHAELS
Attorney for defendant Yok Lee
342 Madison Avenue
New York, New York 10017
(21) 867 - 1170

TO:

WILLIAM DREYER, ESQ.,
Assistant United States Attorney
United States Post Office Building
Albany, New York

Clerk, United States District Court
United States Post Office Building
Albany, New York

MOTION OF DEFENDANT LEE TO CONTROVERT SEARCH WARRANT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

PETER LAZARSKI,
CRAIG L. NEWMAN
NEIL B. WINNER, and
YOK LEE

Indictment No. 75 CR 166

MOTION TO CONTROVERT SEARCH WARRANT

Defendant Yok Lee, by his attorney, DAVID S. MICHAELS, hereby moves to suppress the evidence seized pursuant to and to controvert the search warrant issued on December 18, 1975, specifying premises to be searched as being 209 Wolf Road, Colonie, New York, which motion is made pusuant to Rule 41(f) of the Federal Rules of Criminal Procedure. Defendant Yok Lee further joins in any similar motion to controvert the said warrant and suppress the evidence seized pursuant thereto which may be made by counsel for defendant Lazarski herein.

Annexed hereto is the affidavit of

and the affirmation of counsel for defendant Yok Lee.

Dated: New York, New York
February 26,1976

DAVID S. MICHAELS
Attorney for defendant Yok Lee
342 Madison Avenue
New York, N.Y. 10017
(212) 867-1170

TO:
Clerk, United States District Court
United States Post Office Building
Albany, New York

AFFIRMATION OF DAVID S. MICHAELS, ESQ., FOR DEFENDANT LEE, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

PETER LAZARSKI,
CRAIG L. NEWMAN,
NEIL B. WINNER, and
YOK LEE

Indictment No. 75 CR 166

AFFIRMATION OF COUNSEL IN SUPPORT OF MOTION TO CONTROVERT SEARCH WARRANT

DAVID S. MICHAELS, an attorney duly admitted to practice in the courts of this State, affirms under penalty of perjury, as follows:

I am here serving as counsel for defendant Yok Lee. I have researched the applicable precedents, and the following analysis, in my opinion, constitutes a fair statement of relevant law applied to the facts herein.

Defendant Lee claims standing to challenge the search warrant herein, although the premises searched were not his own, on the grounds that Lee is here charged with the manufacture and, inherently, possession of substances allegedly found at the searched premises, with conspiracy to possess with intent to distribute one such substance, and with two overt

acts of possession of substances allegedly found at the premises searched.[1]

Defendant contends that affidavits in application for search warrants in relation to substances other than controlled substances must necessarily be held to a somewhat differing standard than that applied to controlled substances. Where an affidavit in application for a search warrant relates to unlicensed possession of controlled substances, to establish probable cause to believe a crime is being committed at specified premises, it is sufficient to establish, by the standard of probable cause, that such substances are present there. As to affidavits in application for search warrants relating to other substances, though, the unlicensed possession of which is not criminal (even if it is obtained through devious means as the Government here has acknowledged to counsel) it is necessary that the affidavit establish to the standard of probable cause, not only that the other substance is in fact present at specified premises, but also that there is probable cause to believe that the substance is at least intended to be used in the unlawful manufacture of a controlled substance or in some other criminal act, here particularly specified to be the unlicensed manufacture of Methaqualine and/or Mecloqualone.

Of course, a search is never to be justified by what it

---

1. Jones v. U.S.,362 U.S. 257 (1960)

allegedly turns up, and the warrant must stand or fall by the sufficiency of the information contained therewithin. Neither suspicion nor even "strong reason to suspect" criminal activity is sufficient to establish probable cause: Henry v. U.S., 361 U.S. 98, 101 (1959). In fact, no search warrants should issue unless and until "Suspicions engendered...ripen into a judgment that a crime was probably being comitted": Spinelli v. U.S., 394 U.S. 410, 418 (1969). It is submitted that here, while the affidavit may establish the presence of one remote precusor substance at the specified premises, it falls far short of establishing probable cause to believe that Methaqualone was present. It even fails to establish intent to utilize same to manufacture any controlled substance, or to commit any crime.

Affirmant will respectfully seek to establish, by distinguished expert testimony, that the substance in question has many lawful uses and that the vast majority of it is lawfully used in such various legitimate manners, and that Paragraph 3(g)(2) of the aforesaid affidavit is therefor contended to be inaccurate in stating that "...besides the /possible criminal purpose/ the only other uses for Anthranilic Acid is (sic) /another criminal purpose/ and certain veterinary products." Hence, the affidavit

incorrectly seeks to make ti appear that any substantial order of the substance in question was likely to be intended for unlawful purposes.

Annexed hereto is an exhibit constituting a photocopy of page 434 of the Encyclopedia of Chemical Technology (by Kirk-Othmer[1] which has been provided to me by Roger Williams of Princeton, New Jersey, a distinguished chemical consultant recommended by the Association of Consulting Chemists in New York City. The exhibit demonstrates, defendant Lee contends, that "The main use of Anthranilic Acid is in the manufacture of large numbers of important dyes" including violet, scarlet, red and indigo. Other uses include perfumes, bird and insect repellants, fungicides for syrups, in synthetic flavors such as grape and in the preparation of soy sauce. Affirmant is prepared to provide expert testimony which affirmant believes will authoratatively establish that Anthranilic Acid has such numerous and varied legitimate uses as those specified, and that the overhwelming and preponderant majority of the material so used is for entirely lawful purposes. Hence, it is contended that Paragraph 3(g)(2) of the affidavit in application for the

1. 2d Ed. Vol. 3, Interscience (Wiley) N.Y. 1964

search warrant herein is gravely defective in omitting t primary and legitimate use of the substances as well as numerous other legitimate uses thereof, and in thus suggesting that it was significantly likely that any substantial order for this substance might well have been intended for criminal purposes.

Defendant Yok Lee will also seek to demonstrate that Anthranilic Acid is readily obtained in large quantities without restriction.

If the Court should find it necessary and helpful to its determination, defendant Yok Lee will also establish the occurrence of the substance in foodstuffs, its use in sunburn preventatives and in vitamines.

Further, as is obvious from Paragraph 3(g)(i) of the affidavit, Anthranilic Acid is far from an immediate precusor to Methaqualone, but must go through at least two major chemical transformations before producing the controlled substance.

AFFIRMATION OF DAVID S. MICHAELS, ESQ., FOR DEFENDANT LEE, IN SUPPORT OF MOTION

The inability of the affiant to verify the name and address of the ordering party, as described within Pargraph 3(i) was, we suggest, at least as likely to be due to clerical error or discrepancy in stating the state, town and spelling of the name or address, or any of the above, as to the conclusion stated within 3(i) that the ordering party and firm were in fact non-existant, fictitious and false. Paragraph 3(i) states that the Chief of Wilmington Police Department advised the affiant that there is "no record" of a "Wilmington Farm Coop" in Wilmington Vermont, nor is there a record of a "Bryant Hill Road," nor of a "James Ewing." Paragraph 3(i) in no way makes it clear what records were consulted, whether any check was made to establish whether the Wilmington Farm Coop existed but was unknown to the police official, or was a parent or subsidiary of a local firm, or a new firm. What "records" could possibly have been consulted to determine whether there was a Mr. James Ewing in such town? Were farm directories, county real estate records and state capitol business or agricultural records consulted? The affidavit is silent as to these questions. As

defendant will here seek to establish, many towns named Wilmington exist and a simple error in writing or transcribing the address, for example, from Va. to Vt., could well explain the discrepancy. Accordingly, the statement within the affidavit that the ordering party was fictitious is far from substantially demonstrated, and must be deemed conclusory.

Even, though, if the use of a fictitious name and organization had been established beyond all doubt, such is at most a suspicious circumstance, far from establishing probable cause: U.S. v. Failla, 343 F. Supp. 841 (W.D. N.Y. 1972). Furthermore, while 3(i) states the conclusion that a telephone number on the purchase order recorded by company personnel was false and fictitious, it is to be noted that there is no basis stated for such statement, as such telephone number may have been erroneously recorded by company personnel and there is no indication whatever, on the purchase order or elsewhere, that such telephone number was intended to denote a telephone registered either in the name of the farm coop or Mr. Ewing. Similarly, though, even a fictitious telephone number would be merely a suspicious factor, far from probable cause.[2.]

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2. U.S. v. Failla, cited supra.

Further, 3(a) makes it clear that the agent was uncertain as to whether such order was placed or billed (perhaps erroneously) to the Wilmington Farm Coop.

In Failla, it was held that even where a chemist-defendant ordered a precusor substance, with false credentials, was observed to pick up the substance and bring it in a van-type vehicle to the basement of a private home, was observed to come and go, and was seen working with laboratory equipment in the basement premises in the presence of the precusor substance, his arrest thereafter was held to be precipitous and without probable cause, and the ordering of the precusor substance, even under a false name and apparently false credentials was held to have been merely suspicious and insufficient to constitute probable cause.[3]

By contrast, in those manufacturing cases in which probable cause has been found to exist, far more incriminating allegations were made than in the affidavit herein. For example, the existance of corroborated information from reliable informers, including actual manufacturing processes performed upon the precusor, have

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3. The court, in the cited case, made particular note of the fact that the defendant had not been seen in the possession of, manufacturing or selling any controlled substance and it is submitted that such is clearly the case in this matter as to each and every defendant herein. The Court also noted that the agents had failed to allege and demonstrate that the precusor was not being used subject to license, an allegation also here absent, and of particular consequence where the premises were leased to a chemical technician affiliated with a university, as is alleged to be the case here, and not a mere "hobbyist" as Mr. Failla had been described.

been held sufficient in U. S. v. Welebir, 498 F. 2d 346 (4th Circuit, 1974), and in U.S. v. Martin, 509 F. 2d 1211 (9th Cir. 1975). Such factors are wholly lacking here.

In fact here, a listing of incriminating factors absent would, it is contended, be longer and more substantial than an enumeration of the allegations of allegedly suspicious circumstances cited.

Paragraph 2 of the affidavit states that the controlled substance Methaqualone is believed to be located on the premises to be searched. While it is true that the affidavit later states a basis for believing that Anthranilic Acid was located on the premises, the affidavit states no reason to believe that any Methaqualone would be found therewithin. While the affidavit alleges the agent's belief that he might find at such premises "paraphanelia, instrumentalities and related items used in the manufacture of Methaqualone" as well as certain "papers, books and records related to the manufacture and distribution of Methaqualone," the affidavit provides no stated basis whatever to believe that any of such items were in fact present at the premises to be searched.

Further, while Paragraph 2 of the affidavit states the agent's belief that six other chemicals necessary to manufacture Methaqualone from Anthranilic Acid but, defendant contends, having

many lawful uses, were to be found on the premises, it provides no stated basis whatever to believe that any of such six other necessary chemicals would be found at the premises to be searched.

Defendant Yok Lee contends and will seek to establish by expert testimony, that dozens and perhaps hundreds, of lawful chemicals could have been produced by different combinations of the substances specified. However, in that affirman contends that the affidavit here establishes no cause whatever to believe that any of the items specified in Paragraphs2 and 3(k) of the affidavit, other than (possibly" Anthranilic Acid were in fact present at 209 Wolf Road, the question of the predominant and extremely varied lawful uses of such substances may well be moot.

That the individual who allegedly rented the van which transported the Anthanilic Acid allegedly placed orders for or picked up such other chemicals, four to seven months before, is far from sufficient grounds to believe that such six other necessary chemicals were to be found at the premises to be searched, or were related in any way to the Anthanilic Acid. The Ether, Sodium and Sodium Acetate are, insofar as the affidavit demonstrates, wholly irrelevant to any criminal act.

Defendant's expert testimony will also seek to establish that the bringing of such a substance, in a rented van, to the garage of a chemist's home is in no way significant or suspicious, and can be given little weight.

Paragraph 3(e), noting only the arrival of a vehicle registered to a person from whose telephone calls to chemical companies had been placed months before, in the absence of further information, can be given little, if any,weight, and Paragraph 3(f) is also of minimal consequence here, it is urged. If the fact that "certain" windows in a residence are boarded up and that "other windows" are covered by either cardboard or venetian blinds can in fact constitute any significant contribution to a determination of probable cause, without even a specification as to how many windows were covered, how many fully uncovered and how many had venetian blinds, then the entire citizenry is to be held liable to leave all windows uncovered, uncurtained, and unaccompanied by venetian blinds, even in the cold of northern New York's December, on pain of suspicion of criminal enterprise therewithin. It is submitted that, in the absence of further information, the vague pronouncement of Paragraph 3(f) must be discarded as being of insignificant consequence.

Paragraph 3(j) of the affidavit specifies that telephone records of telephones listed in names of the three defendants (other than Lee) showed that telephone calls were made from such telephones to certain chemical companies

It is specifically to be noted that the affidavit at no time states that any telephone calls referred to in Paragraph 3(j) resulted in the presence of any substance in the premises to be searched. Further, any probative value which such telephone calls may once have had, in the absence of any information as to the content of such calls and the possibility of lawful uses of any chemicals ordered, must necessarily have been dissipated by the passge of time, as the most recent specified telephone call was about a month before the affidavit here questioned was executed: U.S. v. Ramirez, 279 F. 2d 172 (2nd Cir. 1960), and Sgro v. U.S., 287 U.S. 206 (1932), and most were made many months before.

Paragraph 3(l), stating that one Peter Lazarski is a chemical technician, is not only of insignificant consequence in establishing probable cause, but in fact could be viewed as partially exonerative, as a chemical technician may well have chemicals upon his premises for any number of lawful purposes. Such can hardly be deemed even suspicious.

Thus, the allegations of the affidavit in application for the search warrant herein can be summarized as follows: An order for a substance, iteself lawful to possess and having substantial lawful uses, was placed or billed to an individual

and company the location and existence of which could not be readily verified and which may possibly have been fictitious and which had placed a similar order some months before, and the substance was delivered by rented van to the garage of a private home of a chemist, some of the windows of which were covered or had venetian blinds. The truck driver and another, whose car had arrived in the vicinity, had made telephone calls to chemical companies the previous summer, the chemist had telephoned chemical companies a month or more before, and the truck driver had placed a similar order, and orders for other chemicals, some of which could conceivably be used unlawfully, four to seven months before.

Defendant Lee submits that the mere presence of Anthranilic Acid upon the premises of defendant Lazarski is the only fact in relation to what might be found on the premises genuinely established to the standard of probable cause by the affidavit. The presence of any and all other substances is wholly unsubstantiated, and the allegation of criminal intent in the utilization of Anthranilic Acid to manufacture Methaqalone, or, indeed, any controlled substance is wholly speculative, conclusory and is lacking in any sufficient stated basis. All of the other facts alleged within the affidavit are, it is submitted, insufficiently

established and, at most suspicious, but it is submitted that taken as a whole, the affidavit in question fails to provide probable cause to believe that anything other than lawfully-possessed Anthranilic Acid would be found. Accordingly, it is submitted that the warrant here should not have issued, that such must now be controverted, and that all evidence obtained thereby and all statements and leads obtained as a result thereof must be suppressed.[4]

Dated: New York, New York
~~March~~ Feb. 25, 1976

David S. Michaels
David S. Michaels

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4. Silverthorne Lumber Co. v. U.S., 251 U.S. 385, 40 S. Ct. 182 (1919) and Wong Sun v. U.S., 371 U.S. 471 (1963).

A-57

EXHIBIT TO MICHAELS AFFIRMATION - PHOTOCOPY OF PAGE 434 OF THE ENCYCLOPEDIA OF CHEMICAL TECHNOLOGY

Kirk-Othmer, "Encyclopedia of Chemical Technology" 2nd Ed., Vol 3, Interscience (Wiley), NY 1964

caffeine, and magnesium benzoates. Generally these salts find their greatest use in medicinals and as preservatives.

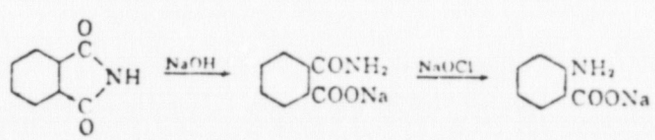
OTHER DERIVATIVES

A voluminous number of benzoic acid derivatives are known, but only a small portion of these are manufactured in any significant volume. Generally, the main end uses of these derivatives are in the dye industry, in medicine, in insecticides, and in the alkyd resin field. Some of the derivatives are prepared from benzoic acid itself, but a greater number are made from other starting materials. Oxidation of the methyl group of substituted toluenes and hydrolysis of the nitrile group of benzonitriles constitute two of the main routes to a large number of derivatives.

o-Aminobenzoic Acid (anthranilic acid), $NH_2C_6H_4COOH$, formula weight, 137.12; mp, 144–146°C; forms white to pale yellow rhombic crystals which are triboluminescent, sublime on heating, and are soluble in hot water, alcohol, and ether.

Anthranilic acid decomposes fairly easily on heating, forming aniline. It can be reduced, depending on the method of reduction, to a mixture of hexahydroanthranilic acid (2-aminocyclohexanecarboxylic acid), hexahydrobenzoic acid (cyclohexanecarboxylic acid), and pimelic acid (1,5-pentanedicarboxylic acid), or to *o*-aminobenzyl alcohol, or to benzoic acid. It is readily halogenated. It forms salts, undergoes diazotization, and is alkylated and arylated in the amino group with great ease.

Anthranilic acid has long been manufactured by the Hofmann reaction from phthalimide (see Phthalic acids) and it is not thought that any other methods of manufacture are in current use.



In the *Hofmann reaction* sodium hypochlorite and caustic soda are added rapidly (60 sec) to a batch of phthalimide solution held at about 30°C. The NaOCl and caustic are cooled to 15°C before entering the heel. A rapid temperature rise occurs after a 90-sec induction period and the batch reaction is complete when the batch temperature reaches a maximum (60–100°C). The anthranilic acid so formed is filtered through carbon black and filter aid to remove any insoluble traces of sodium phthalimide. Hypobromite ion may be used in place of hypochlorite ion in the reaction. Other reaction conditions and especially a modification of the order of addition of reactants may be used in performing the Hofmann reaction.

The main use of anthranilic acid is in the manufacture of a large number of important dyes. Included in the list are Violet BN, Fast Scarlet G, Scarlet 3D for vinyl films, Lake Red D, Acid Alizarine Red B, Indanthrene Red Violet RRK, Indigo, and Thioindigo Red. Many other azo, anthraquinone, and indigo dyes are derivatives of anthranilic acid. Other uses of anthranilic acid and its esters are in perfumes, bird and insect repellents, fungicides for syrups, and in synthetic flavors such as synthetic grape (methyl anthranilate). Anthranilic acid has also been used to prevent mold growth on soy sauce, especially in the Eastern Hemisphere.

Anthranilic acid is sold as a 98 or 99% assay product. The production, sales, and price history of anthranilic acid in recent years are given in Table 6.

NOTICE OF MOTION OF DEFENDANT LAZARSKI

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Vs. NOTICE OF MOTION

PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER and YOK LEE, Cr. #75-CR-166

Defendants.

PLEASE TAKE NOTICE that upon the annexed Affidavit of E. STEWART JONES, JR., ESQ., counsel to the defendant, PETER M. LAZARSKI, the Indictment herein and all of the proceedings heretofore had in connection with this prosecution, and upon the exhibits appended hereto, the undersigned will move before this Court on March 15, 1976, at ten o'clock a.m. or as soon thereafter as counsel can be heard, for the following relief:

1. An Order, pursuant to Rule 41 of the Federal Rules of Criminal Procedure, controverting the search warrant herein and directing the suppression of evidence seized thereunder, as well as leads, evidence and information disclosed, directly or indirectly thereby, upon the grounds that the acquisition of the same by the government was accomplished by and under a constitutionally insufficient search warrant and supporting documentation.

2. An Order suppressing any and all alleged inculpatory statements or admissions of the accused and precluding the government from offering or using the same in evidence upon a trial of this accused in this or any other criminal prosecution, upon the ground that such alleged statements or admissions were and are inadmissable and involuntary as a matter of law, and that such alleged statements were illicited under inherently coercive circumstances and are a direct and proximate result of constitutionally impermissable interrogation or activity by certain governmental agents in flagrant contravention of the accused's constitutional rights and privileges under the Fourth, Fifth and Sixth

NOTICE OF MOTION OF DEFENDANT LAZARSKI

Amendments of the United States Constitution; and/or were and are the poisoned fruits of an invalid arrest or seizure or execution of a search warrant or other unconstitutional conduct, and were and are otherwise involuntary within the meaning and purview of 18 USC Sec. 3501, and for such other and further relief as to this Court may seem just and proper.

3. An Order suppressing any and all leads, information or evidence derived from such alleged inculpatory statements or admissions extracted from the accused and precluding the government from offering or using such information or evidence upon a trial of this accused in this or any other criminal prosecution, upon the ground that the same is the direct and proximate poisoned fruit of an involuntary statement or admission, and for such other and further relief as to this Court may seem just and proper.

4. An Order, pursuant to Rule 7F of the Federal Rules of Criminal Procedure, directing that the government file and serve upon counsel for the said accused, PETER M. LAZARSKI, a Bill of Particulars in the above-entitled prosecution, making known to the accused the following information which pertains to the charges and which is not recited in the Indictment and without which the accused cannot properly or adequately prepare and conduct his defense:

   a. The date on which the defendant, PETER M. LAZARSKI, is alleged to have joined the conspiracy;

   b. An enumeration of the acts, date, place and time of the performance of those acts and persons participating in or present at the time of the performance of those acts allegedly performed in the course of or in the furtherance of the aforesaid conspiracy;

   c. An exact description of each and every overt act committed by the accused herein in furtherance of the alleged conspiracy, together with a statement as to the date, place and time where each such overt act occurred and the identities and roles of the parties present during each such overt act;

   d. Specify the location and time of the meeting referred to in subparagraph "2" of the designation "overt acts" in the Indictment;

   e. Describe the form and substance in which Methaqualone was found and the method and manner of its containment;

f. Describe and specify the dates, times, places and persons involved and/or present with respect to each distribution, if any, of the alleged controlled substance;

g. Specify each date and the hours thereon between December 11 and December 19, on which the accused, PETER M. LAZARSKI, manufactured or participated in manufacturing the Methaqualone;

h. The identities of any unindicted co-conspirators.

5. An Order, pursuant to Rule 16 and Rule 12 of the Federal Rules of Criminal Procedure, and the constitutional due-process mandates enunciated in Brady v. Maryland, 373 U.S. 83, and its progeny, and comprehended by the Sixth Amendment to the United States Constitution, requiring and directing that the United States Attorney make disclosure to the accused and/or his attorney and/or permit discovery and inspection or copying by the accused and/or his attorney of the following:

a. Any and all records, notes, reports, memoranda or any other data relating to, referring to, incorporating or summarizing or transcribing any statements allegedly made by or given by the accused, whether such statements were oral or written, and whether such statements were exculpatory or inculpatory;

b. All records or documents signed by the accused in the course of and in connection with the investigation leading to his arrest and this indictment and in connection with and/or attending his arrest;

c. Copies of any reports, documents, statements, analyses or other records prepared, compiled or submitted by any expert witness in connection with the subject indictment;

d. Any and all records, notes, reports or any other data or memoranda relating to, referring to, incorporating or summarizing or transcribing any statement or statements allegedly made by co-indictee or other co-conspirator or co-participant, whether indicted or unindicted, whether such statements were oral or written and whether such statements were exculpatory or inculpatory;

e. All records, reports, logs, transcripts, tapes or recordings relating to electronic surveillance or other interception or overhearing of telephonic or other conversations;

NOTICE OF MOTION OF DEFENDANT LAZARSKI

f. All records and reports relating to surveillance of this accused or any of the co-indictees or of the Wolf Road premises;

g. All photographs taken in connection with the investigation into the matters covered by this Indictment;

h. All photographs taken of the Wolf Road premises;

i. All photographs taken of the interior of the Wolf Road premises;

j. All phone records secured or acquired which relate to the subject indictment;

k. Copies of all court orders, subpoenas and supporting documents utilized for the purpose of acquiring phone records in connection with the matters covered by the subject Indictment;

l. Any and all records, requisitions, orders, vouchers, invoices, checks, receipts or any other documents relating to the ordering, purchase, shipment, acquisition or receipt of chemicals or chemical equipment involved in the subject Indictment or observed by or seized by the government at the time of the arrest of the said PETER M. LAZARSKI or at the time of the apprehension of the co-indictees herein;

m. A copy of all laboratory records or notes, if any, found at the Wolf Road premises;

n. A representative sampling of the controlled substance, Methaqualone, of sufficient size and quantity to enable inspection, testing, examination and analysis of the sample, to be conducted on behalf of the defendant for the purpose of, among other things, determining whether the said substance was, in fact, a controlled substance or capable of being ascertained to be one within the meaning and purview of the appropriate laws;

o. A precise description and identification of the type of tests or analyses performed and made and methods and procedures used and each, every and all findings yielded in the course of examination, testing, inspection or analysis of the alleged controlled substance, Methaqualone;

p. Description and identification of the laboratory where such tests or analyses were carried out, together with the identity of the laboratory technicians, chemist or chemists performing the same;

NOTICE OF MOTION OF DEFENDANT LAZARSKI

q. The laboratory analysis record or sheet;

r. All records of the BASF Wyandotte Corporation of Newark, New Jersey, pertaining to matters covered by the subject Indictment or utilized or reviewed by the government in connection with its investigation;

s. Any memoranda, reports, records or documents prepared by any governmental agent as a result of contacts or conversations with any of the indictees herein in connection with the ordering, purchase, acquisition, shipping or transportation of chemicals or chemical equipment at Newark, New Jersey;

t. All records, reports, orders, invoices or any other data of any laboratory equipment or chemical supply companies pertaining to any matters covered by the indictment herein or relating to the government's investigation herein or utilized in or reviewed by the government in the course of its investigation herein;

u. The full identities and addresses of each and every company, corporation, business or entity contacted by any of the accused herein with reference to matters covered by the subject Indictment;

v. All records and reports relating to tests for and the ascertainment of fingerprints at the Wolf Road premises, including such tests and the results of such tests that were made upon any item, instrumentality or piece of equipment found or located at the Wolf Road premises;

w. Copies of any and all surveys, drawings or diagrams relating to the Wolf Road premises and records made in connection with such surveys, drawings or diagrams;

x. An itemization of all physical or documentary evidence the government anticipates at this time it will offer into evidence at a trial of this indictment;

y. A list of all witnesses whom the government anticipates at this time it will call upon a trial of this Indictment;

z. Copies of statements taken or records or documents furnished by any person whom the government intends to produce as a witness at a trial of this Indictment;

aa. An itemization with respect to the physical or documentary evidence of the witness through whom each item of physical or documentary evidence will be

introduced into evidence relating each such item to each such witness;

bb. A list of all items, materials, evidence, chemicals, equipments, objects or other matter subjected to examination, testing, analysis or inspection which the government does not anticipate at this time will be used or offered upon a trial of this Indictment;

cc. Copies of any photographs shown to any person in connection with the matter covered by this Indictment or in connection with the investigation leading to or relating to the matters covered in this Indictment;

dd. The names and addresses of all eyewitnesses to the manufacturing activities alleged in the subject Indictment;

ee. The names and addresses of all eyewitnesses to the distribution activities alleged in the subject Indictment;

ff. All records, reports, analyses or other data or documents relating to examination, inspection or analysis of any handwriting allegedly belonging to any of the accused herein;

gg. An itemization of all clothing tested or analyzed, together with the results of each such test or analysis with respect to each such item of clothing;

hh. Any and all information, material, evidence, reports, photographs, descriptions, data, documents, test results, memoranda, records, investigative data, transcripts, personnel records, scientific material or any other information, documents or data which are or may be favorable to the accused or are or may be helpful to the accused or exonerate or may tend to exonerate the accused or may be of material importance or relevant to the defense on either the question of culpability or punishment or on the impeachment of the prosecution's witnesses or the prosecution's case;

ii. All statements made by or any record, memoranda, reports, summaries, notes or any other documents or data or information pertaining to, summarizing, referring to, incorporating or reflecting any statement allegedly made by any co-conspirator, co-participant prosecutorial witness or other person or persons present at the time of any events covered by the subject Indictment which such statement contains or constitutes,

in whole or in part, exculpatory or defensive material or impeaches, contradicts or is inconsistant with the subject Indictment or any matter leading thereto or covered thereby or any portion thereof;

jj. Any and all records, reports, data or information concerning any grants of or promises of immunity or any other form of consideration or plea bargaining granted or promised or being considered for any person who will be a witness for the prosecution upon a trial of this Indictment or who has furnished information, evidence, leads or other data or material to the prosecution in connection with the subject Indictment;

kk. A copy of the arrest record, the FBI criminal data sheet, the NYSIIS record or any other criminal record or records of each and all prosecution witnesses;

ll. The identities and addresses of all persons known to the prosecution or to any governmental or law enforcement agency whose testimony or information may be helpful to the accused in the preparation or conduct of his defense;

mm. The date or dates on which the accused's name was first mentioned in connection with any of the events referred to in the subject Indictment;

nn. All statements, transcripts, notes, memoranda or other records, documents or data pertaining to interviews of or statements from witnesses whom the government does not propose to call;

oo. All records, reports, statements, transcripts or any other data, document or information which does or may or might tend to impeach or discredit any witness the prosecution anticipates it may call upon a trial of this Indictment;

pp. The identities and addresses of those persons to whom the government or any agent thereof spoke or contacted who would not consent to give a statement or to be fully interviewed or who would not in any other respect fully cooperate with the government;

qq. The names, addresses, business and law enforcement relationship of all those persons who furnished information with respect to matters and events covered by the subject Indictment or in connection with the investigation or surveillance leading to the subject Indictment;

rr. The names, addresses, business and law enforcement relationship of all those persons who participated in the investigation leading to the subject Indictment or who were engaged in surveillance of the

NOTICE OF MOTION OF DEFENDANT LAZARSKI

Wolf Road premises or any of the indictees herein.

PLEASE TAKE FURTHER NOTICE, that the accused will also request the Court to order and direct that the accused's right to disclosure and discovery with respect to the aforedescribed data be deemed to be continuing and that the United States Attorney's office, after complying with any Order or directive of discovery made or entered herein, be directed to promptly notify the accused's attorney of any additional documents, transcripts, reports, records, statements, property, tapes, physical evidence, identities of witnesses or any other evidence, items or information relevant, pertinent or material to the matters embraced within the four corners of the subject Indictment, discovered by the said United States Attorney's office, in the time prior to the conclusion of this case, which is subject to or covered by the Order or directives of this Court, and

PLEASE TAKE FURTHER NOTICE, that the accused will also request that the Court permit such further discovery applications as may be necessary to protect and preserve the rights of the accused, or as may be indicated by disclosure obtained by this or co-related motions, and

PLEASE TAKE FURTHER NOTICE, that the accused reserves the right to request this Court permit such independent laboratory or scientific analysis, testing or inspection of physical evidence pertinent to this Indictment which your deponent deems appropriate, and

PLEASE TAKE FURTHER NOTICE, that the accused reserves the right to make any and all further motions which may become necessary and appropriate by reason of information generated by the responses to

NOTICE OF MOTION OF DEFENDANT LAZARSKI

these motions or in the course of hearings conducted with respect to any of the issues raised by these motions including but not limited to the following:

> An Order suppressing any and all information, evidence, communications or conversations obtained by electronic surveillance or other telephonic or conversational interception or overhearing.

Dated: March 9, 1976

Yours, etc.,

E. STEWART JONES, JR.
Attorney for Defendant
Office and P.O. Address
28 Second Street
Troy, New York 12181
Tel: (518) 274-5820

TO:

OFFICE OF THE UNITED STATES ATTORNEY
Northern District of New York
United States Court House and Post Office
Albany, New York 12207

CLERK, UNITED STATES DISTRICT COURT
Northern District of New York
Federal Post Office Building
Utica, New York 13503

AFFIDAVIT OF E. STEWART JONES, JR., ESQ., FOR DEFENDANT LAZARSKI, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Vs.

PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER and YOK LEE,

SUPPORTING AFFIDAVIT

Defendants.

STATE OF NEW YORK)
COUNTY OF RENSSELAER) ss:
CITY OF TROY)

E. STEWART JONES, JR., being duly sworn, deposes and says:

1. I am an attorney at law duly licensed to practice my profession in the State of New York and in the United States District Court for the Northern District of New York.

2. I am the attorney for PETER M. LAZARSKI, one of the accused above-named, and I make this Affidavit in support of the relief requested in the appended Notice of Motion.

3. Initially, it is respectfully submitted that the search and seizure of the premises at Wolf Road being occupied by PETER M. LAZARSKI were and are constitutionally impermissable as having been carried out pursuant to and on the authority of an invalid constitutionally deficient search warrant and supporting affidavit. The search warrant should be vacated and all evidence, material and information obtained pursuant to its execution should be suppressed

AFFIDAVIT OF E. STEWART JONES, JR., ESQ., FOR DEFENDANT LAZARSKI, IN SUPPORT OF MOTION

for the following reasons:

1. The Affidavit fails to establish that there was probable cause to believe that the substances, the unlicensed possession of which is not in and of itself criminal, were intended to be used in the unlawful manufacture of Methaqualone or Mecloqualone.

2. The Affidavit fails to establish probable cause to believe that Methaqualone was present on the subject premises.

3. The Affidavit fails to establish probable cause to believe that an intent to utilize the chemical, anthranilic acid, for the purpose of manufacturing a per se illicit substance, existed.

4. The precursor chemical, anthranilic acid, upon whose presence at the Wolf Road premises the search warrant was, in large measure, issued, is not an immediate precursor chemical to Methaqualone but must go through at least two chemical transformations before achieving the status of that illicit substance; the said chemical has many legitimate and lawful uses, including a role in the manufacture of dyes, veterinary products, farm products, perfumes, bird and insect repellants, fungicides for syrups, synthetic flavoring, vitamins, sunburn preventatives and foodstuffs, and in view of the variety and breadth of its use for lawful purposes and legitimate enterprises, the suggestion or inference apparently drawn in this case that its presence connotes criminality is impermissable, unsupportable and constitutionally prohibited as a substantiated basis for probable cause.

5. The Affidavit was inaccurate and misleading in insinuating that the only non-criminal purpose for or use of anthranilic acid would be in connection with the manufacture of certain veterinary products.

6. Anthranilic acid is not a controlled substance and may, in fact, be readily obtained in large quantities without restriction.

7. Much of the information contained in the supporting Affidavit is stale and, to that extent, could not, therefore, have been properly considered in determining whether or not the requisite probable cause for the issuance of the search warrant was established within the four corners of the supporting Affidavit.

AFFIDAVIT OF E. STEWART JONES, JR., ESQ., FOR DEFENDANT LAZARSKI, IN SUPPORT OF MOTION

8. The supporting Affidavit is replete with innocuous and irrelevant information which fails to contribute anything to the establishing of probable cause or to the verification or detailing of any of the hearsay statements related in the supporting Affidavit.

9. The supporting Affidavit fails to set forth the underlying facts or circumstances from which the Chief of Police of Wilmington, Vermont concluded that there was no record of a Wilmington Farm Co-Op or of a Bryant Hill Road or of a James Ewing. There is no information within the Affidavit to rule out the probability that this information as related by the affiant was the product of hearsay upon hearsay upon hearsay ad nauseam. The information as related, therefore, is indeed conclusory and speculative and entitled to no legal weight.

10. The legally neutral, equivocal or even suspicious factors alluded to in the supporting Affidavit do not rise to the level of, nor do they furnish, probable cause.

Illustratively:

a. PETER M. LAZARSKI's occupation as a chemical technician is viewed in a light most advantageous to the government, legally innocuous, and viewed logically diminishes any inference of criminality which the government might endeavor to persuade this Court to draw from the delivery of anthranilic acid to his premises.

b. Subparagraphs "3a, b, c, d, e, f" are in no way suggestive of conduct or behavior individually or cumulatively that builds toward probable cause.

c. Subparagraph "3g 1 and 2" are misleading and inaccurate and the true facts, as related hereinabove, demonstrate that the possession of anthranilic acid is more consistant with innocent purposes and intent than criminality.

d. Subparagraph "3h" is stale information and entitled to no probative weight and is, in any event, legally innocuous data.

e. Subparagraph "3j 1, 2 and 3" is replete with stale information which is entitled to no probative weight and does not, in any event, constitute criminal behavior or permit an inference logically and compellingly to be drawn that such behavior was afoot.

f. Subparagraph "3k" also is irrelevant in view of the staleness of the information contained therein and in view of the legally neutral nature of that information.

g. Subparagraph "3m" alleges information that is of absolutely no moment in assessing probable cause and is, in fact, consistant with innocence.

11. The no-knock, forcible entry of the governmental agents into the Wolf Road premises was unreasonable, unauthorized and violative of 18 U.S.C. Sec. 3109.

12. The affidavit fails to furnish any stated, substantiated basis for concluding that "paraphernalia, instrumentalities and related items used in the manufacture of Methaqualone, as well as certain papers, books and records related to the manufacture and distribution of Methaqualone were present at the Wolf Road premises.

Moreover, the allegation in paragraph "2" of the affidavit reciting the affiant's belief that six other chemicals necessary to the manufacture of Methaqualone from anthranilic acid were present is also wholly devoid of any stated, substantiated basis for such a conclusion. In addition, any number of lawful chemical end products could have been fabricated by differing combinations of the chemical substances referred to.

13. The recitation in paragraph "3j" referable to the telephone calls fails to recite or suggest any causal relationship between those calls and the presence of any substance at the Wolf Road premises and fails to establish any substantiated basis for concluding that those calls resulted in the existence of criminal activity at the Wolf Road premises or the present presence of any substance at the Wolf Road premises whose possession is wholly consistant with criminality.

14. Any information recited in the affidavit which is the product, directly or indirectly, of electronic surveillance or non-consensual recording or overhearing of certain purported conversations was, if obtained at all, secured in violation of the accused's First Amendment right to free speech, constitutional right to privacy and Fourth, Fifth, Sixth and Fourteenth Amendment rights and is otherwise the constitutionally impermissible fruit of constitutionally repugnant governmental activity.

15. The material representations of fact and erroneous information contained within the four corners of

the affidavit with specific reference to the uses of anthranilic acid vitiate the affidavit.

4. It is clear that the government will endeavor to employ all of the items seized in prosecuting Mr. Lazarski. In fact, the Methaqualone described is also at the very core of the subject Indictment. As the warrant was directed against Mr. Lazarski and against his premises and as the material seized pursuant to the execution of that warrant has been used in evidence against him by the government and will be, if permitted, used against him on a trial of this indictment, he is an "aggrieved person" and has a statutory and constitutional right to test the statutory and constitutionally sufficiency and legitimacy of the search warrant and seizure executed pursuant thereto.

5. Assuming arguendo that the search of and seizure from the Wolf Road premises is unconstitutionalized by the deficient affidavit and governmental conduct, then obviously the fruits thereof inclusive of the arrest of Mr. Lazarski, the search of his person and any information obtained, directly or indirectly, by reason of interrogation of him while in custody must also fall as the fruits of the poisoned tree (Silverthorne Lumber Co. v. U.S., 251 U.S. 385; Wong Sun v. U.S., 371 U.S. 471).

* * *

AFFIDAVIT OF E. STEWART JONES, JR., ESQ., FOR DEFENDANT LAZARSKI, IN SUPPORT OF MOTION

* * *

WHEREFORE, your deponent respectfully requests that this Court grant, in all respects, the motions herein.

E. STEWART JONES, JR.

NOTICE OF MOTION OF DEFENDANT NEWMAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

NOTICE OF MOTION

PETER M. LAZARSKI,
CRAIG L. NEWMAN,
NEIL B. WINNER
YOK LEE

Indictment No.
75-CR-166

SIR:

PLEASE TAKE NOTICE, that on the annexed Affidavit of Donald J. Shanley sworn to the 9th day of March, 1976 on the Indictment herein and upon all pleadings and prior proceedings heretofore filed and had herein the undersigned will move this Court at a motion term thereof to be held at the Federal Court House in the Federal Building in the City of Albany, New York on March 15, 1976 at 10:00 a.m. or as soon thereafter as counsel can be heard on behalf of the Defendant Craig L. Newman for an Order pursuant to Rule 41 and Rule 12 of the Federal Rules of Criminal Procedure requiring and directing that no property or information which was seized from the premises known as 209 Wolf Road, Town of Colonie, New York 12205 on December 19, 1975 pursuant to a search warrant for the said premises issued on December 18, 1975 by the Hon. John H. Spain, Federal Magistrate, United States District Court for the Northern District of New York be introduced as evidence against said Defendant in the prosecution of

NOTICE OF MOTION OF DEFENDANT NEWMAN

the indictment in this case and further requiring and directing that any other evidence which may have resulted directly or indirectly from this search be suppressed as evidence against this defendant.

DATED: March 9 , 1976

DONALD J. SHANLEY
Attorney for Defendant
Craig L. Newman
Office Address
35 First Street
Troy, New York 12180
(518) 274-1314

AFFIDAVIT OF DONALD J. SHANLEY, ESQ., FOR DEFENDANT NEWMAN, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

PETER M. LAZARSKI
CRAIG L. NEWMAN
NEIL B. WINNER
YOK LEE

AFFIDAVIT

Indictment No.
75-CR-166

STATE OF NEW YORK)
COUNTY OF RENSSELAER) ss.:

DONALD J. SHANLEY, being duly sworn, deposes and says:

1. I am the attorney for the Defendant Craig L. Newman and submit this Affidavit in support of my application for an Order pursuant to Rule 41 and Rule 12 of the Federal Rules of Criminal Procedure suppressing as evidence certain information and property unlawfully seized from the premises known as 209 Wolf Road, Town of Colonie, New York 12205 on December 19, 1975 pursuant to a search warrant for the said premises issued on December 18, 1975 by the Hon. John H. Spain, United States Magistrate, United States District Court for the Northern District of New York in violation of the laws of the United States and the Fourth Amendment of the United States Constitution. I make this Affidavit on the basis of conferences with the Defendant Craig L. Newman, the papers and pleadings previously filed in this matter, discussions with Assistant United States Attorney William J. Dreyer, and a review of the legal precedents considered applicable to the

issues in this case.

2. The Defendant Craig L. Newman was indicted on December 29, 1975 and was charged in said indictment with violations of Title 21 United States Code Sections 841 sub. (a) sub. (1) and 846 and Title 18 United States Code Section 2. An essential element of the aforesaid violations charged in said Indictment was possession of certain property unlawfully seized from the premises known as 209 Wolf Road, Town of Colonie, New York 12205 on December 19, 1975 pursuant to a search warrant for the said premises issued on December 18, 1975 by the Hon. John H. Spain, United States Magistrate, United States District Court for the Northern District of New York.

3. On December 19, 1975 Special Agent Raymond W. Tripp of the United States Department of Justice, Drug Enforcement Administration provided a sworn inventory to the said Hon. John H. Spain of the property seized at the aforesaid premises pursuant to the aforesaid warrant. Special Agent Tripp swore in said inventory that a list of eighty items seized at the aforesaid premises on the aforesaid date and attached hereto (Exhibit A) was a true and detailed account of all property taken pursuant to said warrant and Special Agent Tripp further swore that said inventory was made in the presence of Special Agent Lon Sturrock and J. Barbato, Chemist, United States Department of Justice, Drug Enforcement Administration.

4. The search of the premises at 209 Wolf Road and the seizure of property, information and leads as a result of that search was in violation

of Rule 41 of the Federal Rules of Criminal Procedure and the Fourth Amendment of the United States Constitution. Rule 41 and the Fourth Amendment jointly require that the Affidavit which serves as the basis for the warrant must provide probable cause to believe that the items sought to be seized are presently in the place sought to be searched Aguilar v. Texas, 378 U.S. 108 (1964); United States v. Harris, 403 U.S. 573 (1971); Spinelli v. United States, 393 U.S. 410 (1969).

In essence, probable cause means reasonable grounds Brinegar v. United States, 338 U.S. 160 (1949) and if there are no reasonable grounds for the issuance of the warrant within the meaning of Rule 41 and the Fourth Amendment then the evidence obtained as a result of the search must be suppressed. Weeks v. United States, 232 U.S. 383 (1914).

The determination of whether probable cause in the sense exists must be made solely on the basis of the Affidavit or Affidavits which allegedly support the issuance of the warrant. Information not made part of the Affidavit cannot be considered in the probable cause determination and may not be used at a later time to bolster the warrant. United States v. Damitz, 495 F 2d 50 (9th Cir 1974).

In the instant case, a search warrant was signed by the Hon. John H. Spain on December 18, 1975 on the basis of an Affidavit signed on December 18, 1975 by Special Agent Raymond W. Tripp, United States Department of Justice, Drug Enforcement Administration. This search warrant was directed to the premises at 209 Wolf Road, Colonie, New York where, it was asserted, the affiant had reason to believe was concealed a

quantity of methaqualone and/or mecloqualone, chemi als and other materials used in the manufacture of said methaqualone and/or mecloqualone, together with the apparatus and instrumentalities utilized in said manufacturing process and the books and records relating to the manufacture and distribution of said methaqualone and/or mecloqualone.

Hence, in this case, the Affidavit of Special Agent Tripp must contain within its four corners sufficient factual information to give rise to probable cause or reasonable grounds to believe that said methaqualone and/or mecloqualone together with the materials, apparatus, and instrumentalities used in the manufacture of this methaqualone and/or mecloqualone and the books and records relating to the manufacture and distribution of this methaqualone and/or mecloqualone were on the premises known as 209 Wolf Road, Colonie, New York on December 18, 1975 when the search warrant was issued.

It must be shown, in short, in the Affidavit of Special Agent Tripp that there was both the means and materials for manufacturing methaqualone and/or mecloqualone and that these controlled substances were in fact being manufactured and were present on the said premises. It is not a crime to possess the material and means for said manufacturing process unless it is further demonstrated that these materials and means are actually being utilized for the manufacture of said controlled substances.

An examination of the factual assertions contained in the Affidavit of Special Agent Tripp reveals that they do not support a finding of probable

cause or reasonable grounds to believe that methaqualone and/or mecloqualone together with the materials, instrumentalities and records relating to the manufacture and distribution of said controlled substances were on the premises known as 209 Wolf Road, Colonie, New York on December 18, 1975.

These factual assertions are of two distinct types. One is based on the direct and personal knowledge of the affiant. Here the affiant must state both the facts presented and the source of these facts. Aguilar v. Texas, supra. The other type is a hearsay declaration made by another party to the affiant and duly reported in the Affidavit by the affiant. These latter factual assertions based on hearsay are proper under the provisions of Rule 41 (c) of the Federal Rules of Criminal Procedure and the controlling case law. United States v. Harris, supra; Spinelli v. United States, supra.

When such hearsay declarations are utilized to support a finding of probable cause, however, the Affidavit must disclose the factual circumstances of the hearsay declarant's knowledge or observations United States v. Harris, supra; Spinelli v. United States, supra; and, in addition the Affidavit must provide specific facts from which it may be determined by the magistrate that the hearsay declarant is credible or reliable. Aguilar v. Texas, supra; Jones v. United States, 362 U.S. 257 (1960).

Probable cause must always be measured by the facts of a particular case, Wong Sun v. United States, 371 U.S. 471 (1963) and an itemized review of the factual assertions contained in the Affidavit of

Special Agent Tripp should make it clear that the probable cause required for the issuance of this warrant was not provided by this Affidavit.

The factual assertions contained in the Affidavit of Special Agent Tripp may be divided into the following categories for analysis.

1. The first category is a group of factual assertions which placed some 2,200 lbs. of Anthranilic Acid on the premises known as 209 Wolf Road, Colonie, New York on December 11, 1975. These assertions are contained in paragraphs 3 (a), 3(b) and 3 (c) of Special Agent Tripp's Affidavit. They essentially state that the Defendant Craig L. Newman and an unidentified individual loaded the 2,200 lbs. of Anthranilic Acid into a rented Hertz truck, delivered it on the same date to premises at 209 Wolf Road, Colonie, New York, and thereafter returned the rented truck to the rental agency in Troy, New York.

These factual assertions are themselves as consistent with innocent activity as with any reasonable belief that these parties were engaged in the manufacture of methaqualone and/or mecloqualone. This is especially true because the parties conducted themselves in an open manner free from furtiveness or secretiveness. The Defendant Newman rented the truck in his own name and signed the purchase order attached to the search warrant as Exhibit A with his own name. There are no assertions that the route or manner of driving of the truck was in any way designed to mislead or detect surveillance. The unloading process was, furthermore, conducted in a sufficiently open manner to allow the surveilling agents to clearly observe

it and the truck was then returned to its proper owner in a similarly open manner. In short, these actions were by their open nature more indicative of innocent activity than of any connection to the manufacture of a controlled substance.

In the recent case of United States v. Failla, 343 F. Supp. 831 (1972), the defendant had purchased lithium aluminum hydride, a chemical often used in the manufacture of amphetamines. There was no evidence, however, that the defendant's conduct subsequent to the delivery of this material was in any way suspicious. He unloaded and delivered the material openly, never attempted to hide his activities, and never indicated that he knew he was being followed or that he was about to destroy evidence. The court found this pattern of open movement and action to be of great significance in determining that probable cause to arrest the defendant in that case did not exist and the open conduct of the defendants as outlined in paragraphs 3 (a), 3(b) and 3(c) of the Affidavit should be similarly persuasive.

The relatively large amount of Anthranilic Acid delivered is not suspicious in and of itself since this amount is as likely to be for legitimate purposes as for illegitimate purposes. The amount of Anthranilic Acid, then, is neutral in character and does not add to a finding of probable cause in and of itself. In fact, the open purchase of such a large amount is more indicative of innocent activity than the activity of an illicit enterprise where the purchases might be more likely to be made in smaller quantities that would be less likely to attract attention or arouse suspicion.

AFFIDAVIT OF DONALD J. SHANLEY, ESQ., FOR DEFENDANT NEWMAN, IN SUPPORT OF MOTION

2. The second category is a group factual assertions in the affidavit which indicate that the Anthranilic Acid was falsely purchased by the Wilmington Farm Coop. of 10 Bryant Road, Wilmington, Vermont. These assertions are first contained in paragraph 3 (a), where it alleged that the order for the Anthranilic Acid was verbally placed by this aforementioned farm coop on December 9, 1975 (See Exhibit B attached to the search warrant). In paragraph 3 (h) it is alleged that this same farm coop purchased 440 lbs. of Anthranilic Acid on July 2, 1975 and that it was paid for by one James Ewing of the same farm coop. (See Exhibit B attached to the search warrant.) In paragraph 3 (i) it is alleged that one Richard Pratt, Chief of Police, Wilmington, Vermont Police Department, advised the affiant that there is no record of the Wilmington Farm Coop., Bryant Hill Road, or James Ewing in Wilmington, Vermont. It is then further alleged in this paragraph that Vermont telephone authorities advised the affiant that the telephone number (802) 254-6002 which appears on Exhibit B attached to the search warrant is fictitious and false.

These factual assertions are inadequate to form a reasonable basis for believing that the Anthranilic Acid purchased and delivered to 209 Wolf Road, Colonie, New York on December 11, 1975 was related to the manufacture of methaqualone and/or mecloqualone. The assertion in paragraph 3 (a) that the order for the Anthranilic Acid was verbally placed by the Wilmington Farm Coop. of 10 Bryant Hill, Wilmington, Vermont is of no significance in and of itself. The fact of delivery to a premises in

Colonie, New York does not indicate suspicious activity since the route taken from New Jersey to Colonie is also a possible route to Wilmington, Vermont and the Anthranilic Acid might well be trans-shipped at a later time from the Colonie location.

The assertion in paragraph 3 (h) about a previous similar order on July 2, 1975 is likewise unhelpful in establishing probable cause for the same reason. In addition, the time lapse of five months from that previous order makes it absolutely irrelevant to whether the Anthranilic Acid delivered five months later to the premises in Colonie, New York was related to the manufacture of methaqualone and/or mecloqualone. Indeed, there is no proof in the Affidavit, whatsoever, that this prior purchase was delivered to the premises that were the subject of the search warrant or that the individual named James Ewing was in any way related to these premises or any of the defendants in this case. Lastly, even if a relationship to the Colonie premises or these defendants were presumed, there is no evidence in the Affidavit to suggest that this Anthranilic Acid ordered on July 2, 1975 was used in the manufacture of methaqualone and/or mecloqualone then or on December 18, 1975.

Furthermore, the assertions in paragraph 3 (i) that there is no record of the Wilmington Farm Coop., Bryant Hill Road, or James Ewing in Wilmington, Vermont also does not help to establish the required level of probable cause. Likewise is true of the assertion that the phone number (802) 254-6002 which appears on Exhibit B attached to the warrant is false.

Both assertions are hearsay declarations. The first by Richard Pratt, Chief of Police, Wilmington, Vermont and the second is by

unidentified "Vermont telephone authorities." As noted previously, when a hearsay declaration is utilized to support a finding of probable cause, a two-fold test must be met Aguilar v. Texas, supra.

First, the Affidavit must disclose the factual basis for the hearsay declarant's knowledge. This factual basis is not provided in either case. The Affidavit does not disclose in any way the factual on which Richard Pratt determined that "there is no record of a Wilmington Farm Coop, a Bryant Hill Road, or a James Ewing in Wilmington, Vermont." There is no indication of what records, checks or knowledge this conclusory statement is made upon. It might well be that no checks were made nor any investigation conducted and that James Pratt was merely offering his best, uneducated opinion. Likewise, the Affidavit does not provide any factual basis for the assertion by "telephone authorities in the Vermont District" that the telephone number (802) 254-6002 is "false and fictitious." The source of this information is not even specifically identified and there is absolutely no indication of how it was determined that this phone number was false and fictitious. Nor does it indicate when these checks were made and because this phone number did not exist in December, 1975 did not mean it did not exist when it appeared on the purchase order on July 2, 1975. The first part of the hearsay test, then, that the factual basis for the declaration must be revealed, has clearly not been met in either case.

The second part of the hearsay test, that the Affidavit must provide specific facts which show that the hearsay declarant is reliable and credible, is likewise clearly not met. There are no facts in the Affidavit to show that Richard Pratt is reliable and credible in stating that there is no

record of the Wilmington Farm Coop, Bryant Hill Road, or James Ewing in Wilmington, Vermont. Mr. Pratt is not shown to be knowledgeable or to possess any special expertise in such matters and the simple fact that he is Chief of Police in Wilmington, Vermont does not establish such knowledge or expertise since he may have just moved there from somewhere else. There is no factual assertion that he is a long-time resident of Wilmington, Vermont.

In the same vein, it is impossible to determine whether unidentified "Vermont telephone authorities" are credible or reliable since we are not even informed of their identity. The Affidavit does not even show that these unidentified authorities are in the Vermont District which encompasses Wilmington, Vermont, since no particular Vermont District is identified. Nor does the Affidavit indicate that these telephone authorities, whoever they are, have any responsibility or knowledge or expertise in providing the information requested.

In short, the factual assertions contained in paragraph 3 (i) of the Affidavit clearly do not meet the two-fold test required by Aguilar v. Texas, supra, and thus may not be used in determining whether or not the Affidavit of Special Agent Tripp contained probable cause for the issuance of the search warrant in this case.

Furthermore, even if the assertions contained in paragraph 3 (i) could be utilized in a determination of probable cause, these assertions would merely indicate suspicious factors rather than establish probable cause. In United States v. Failla, supra, for example, the defendant ordered the precursor for a controlled substance in the name of Dr. Paul

Burke, 92 Plymonth Avenue, Buffalo, New York on stationary imprinted with the seal of Canisius College rather than on the customary purchase order form. The drug company notified the federal authorities and investigation revealed that Dr. Burke was not associated with Canisius College, that Canisius College had not placed this order, and that no one named Dr. Paul Burke resided at the 92 Plymouth Avenue address. Furthermore, the defendant Failla, when he picked up the drugs, signed a false name and took them to another address where his father lived.

Here, in a factual setting virtually on all fours with the instant case, the court found that the telephone call from the drug company was not the tip of a reliable informant in the traditional sense. The court further found the purchase order to be at best a "red flag to arouse the suspicions of an alert agent" no different from the purchase of paper often used in counterfeiting and the use of Canisius College stationary and a false name on the order and receipt were merely "suspicious." Significantly, the court pointed out that "the surveillance had not gone far enough at the time of arrest to permit the discovery of circumstances constituting probable cause." The arrest was therefore "precipitous and without probable cause." United States v. Failla, supra, 835, 836.

Similarly, in the instant case, the assertions in paragraph 3 (i) could not establish probable cause even if they could be used for that purpose. They are at best "merely suspicious" and further investigation was necessary

to ripen this mere suspicion into mature probable cause.

3. The third category of factual assertions contained in the Affidavit of Special Agent Tripp is the group of assertions which allege that certain phone calls were made by the defendants, Lazarski, Winner and Newman to various chemical companies.

First, contrary to the rule cited previously in Aguilar v. Texas, supra, no source of this information concerning the phone calls allegedly placed from phones listed to some of the defendants was ever provided in the Affidavit. These phone calls should not therefore be considered in a determination of probable cause in this case.

Secondly, even if these various alleged phone calls were considered, they are irrelevant to such a determination of probable cause.

In paragraph 3 (j) (1), for example, it is alleged that phone calls were made from a phone listed to Peter Lazarski to the S. G. A. Scientific Supply Company, Bloomfield, New Jersey on November 4, 5 and 21, 1975 and one call to the Conso Lab Supply Company, Westfury, New York on November 21, 1975.

These phone calls are totally irrelevant to the establishment of probable cause to believe that methaqualone and/or mecloqualone were on the premises at 209 Wolf Road, Colonie, New York on December 18, 1975. There are no facts presented that Lazarski or any other defendant made these calls or were even in Colonie, New York on these dates. There are no facts presented to indicate that what was discussed in these phone calls was relevant to any illegitimate purp . Indeed, paragraph 3 (k) indicates that Mr. Lazarski is a chemical technician at Hudson Valley Community

College and this fact clearly indicates that, even if one assumes that Mr. Lazarski made these phone calls, they were no indicator whatsoever of any illegitimate enterprise.

Paragraph 3 (j) (2) which indicates that certain calls were placed to various chemical companies from a phone listed to Neil Winner on July 16, 18 and 25, 1975 is similarly irrelevant to the establishment of probable cause in this case. Once again, there are no facts shown to indicate that Mr. Winner or any of the other defendants made these calls. In addition, there is no indication of the subject matter of these calls and they are certainly as likely to be for a legitimate purpose as for an illegitimate purpose. They are also some five months before this Affidavit was made and this staleness, when taken together with their total lack of significance in any case whenever made, makes them completely irrelevant to the establishment of probable cause to believe that methaqualone and/or mecloqualone was being manufactured at 209 Wolf Road, Colonie, New York on December 18, 1975.

Paragraph 3 (j) (3) which indicates that phone calls were placed from telephone number 276-6077 listed to Craig Newman to the Conso Lab Supply Company on June 22 and 23, 1975 and July 7, 10, 16 and 25, 1975 is factually erroneous and in any case irrelevant. Mr. Newman did not on these dates and does not now have the phone number 276-6077 listed in his name. In any case, even if the Affidavit showed facts to indicate that these phone calls were placed from his phone, which it does not, there are no further facts to indicate that he or any other defendant placed them or that

they related to any illegitimate purpose much less to the manufacture of methaqualone at 209 Wolf Road, Colonie, New York on December 18, 1975. Furthermore, since they were placed five and six months prior to the time the Affidavit was made, their non-significance was extremely stale non-significance and they are therefore irrelevant to the establishment of probable cause in this case.

4. The fourth category of factual assertions contained in the Affidavit is the group of assertions contained in paragraph 3 (k) of the Affidavit relating to orders placed and chemicals received by the defendant Newman from the Conso Lab Supply Company in May, June, July and possibly August of 1975.

It should first be noted that the assertions contained in this paragraph are hearsay declarations.

It is not clear from the paragraph how many layers of hearsay these assertions passed through before being recorded in the Affidavit, The paragraph states that the affiant was "advised that Paul Sennett, Special Agent, Drug Enforcement Administration, contacted the Conso Lab Supply Company and learned that the Defendant Newman had allegedly ordered and received certain chemicals. It does not state whether Special Agent Sennett so advised him or whether someone else advised him of Special Agent Sennett's action and how they learned of this action. There may be at least one level of hearsay here and perhaps two levels of hearsay. The paragraph also does not reveal how it was determined from the Conso Lab Supply Company

that the defendant Newman had allegedly ordered and received certain chemicals. There thus may be a third level of hearsay presented if an employee of the Conso Lab Supply Company made declarations to this effect.

On the basis of the assertions made in this paragraph it would be impossible for Magistrate Spain to determine whether or not the two-fold test of Aguilar v. Texas, supra was met. He would have to have called some witnesses or received other information in order to make such a determination. There is no record that such an action was taken and the factual assertions contained in this paragraph may thus not be used to determine probable cause.

Even if it is assumed that there is sufficient clarity in these factual assertions to allow the application of the Aguilar test, none of the possible levels of hearsay fully meet its requirements. If an employee of the Conso Lab Supply Company made any declarations, there is no factual showing of the basis for this declaration and, since there is no identification of the employee, also no factual showing that the employee is either credible or reliable in these matters. Similarly, if Special Agent Sennett made any declarations, there is no showing of the factual basis for such declarations. Lastly, if a declarant reported the actions of Special Agent Sennett to the affiant, there is both no showing of the factual basis for this declaration or that the declarant, who is unidentified, is reliable or credible.

Furthermore, even if one were to assume that the hearsay declarations contained in paragraph 3 (κ) were useable in a determination of probable cause, they are irrelevant to such a determination for a variety of reasons.

First, the chemicals which were allegedly received by the defendant Newman in May, June, July and possibly August, 1975 are at a minimum four months and at a maximum seven months prior to the date of December 18, 1975 when the warrant was sought. There was no factual indication that the defendant Newman or any other defendant was still in possession of any or all of these chemicals on December 18, 1975. Nor was there any factual showing that these chemicals were even in the premises at 209 Wolf Road, Colonie, New York on December 18, 1975 or at any other time. Since the warrant was directed only to the presence on these premises of methaqualone and/or mecloqualone and since there was no showing that these chemicals were ever on said premises, they are irrelevant to a proper determination of probable cause.

Secondly, the factual assertion that the defendant Newman had ordered 48 kilos of Orthotoludine in June 1975 is irrelevant to the determination of probable cause because he never picked it up and because the mere fact of such an order six months before the application for the search warrant makes it irrelevant to a determination of probable cause as well.

Thirdly, the factual assertion that the defendant Newman obtained four kilos of Anthranilic Acid in May 1975 from the Conso Lab Supply Company is in error since no such material was ever obtained by the defendant

Newman.

Fourthly, it appears that three of the chemicals allegedly obtained by the defendant Newman, Ether, Sodium and Sodium Acetate, are unrelated to the manufacturing process for methaqualone and/or mecloqualone outlined in paragraph 3 (g) (1).

Fifthly, the various drugs allegedly obtained from this company by the defendant Newman have perfectly legitimate uses for any chemical hobbyist and the mere fact of obtaining them cannot be considered to be a contributing factor to probable cause especially since there is no factual showing that the defendant Newman or any other defendant possessed all of the ingredients for the manufacture of methaqualone and/or mecloqualone on December 18, 1975 at 209 Wolf Road, Colonie, New York or at any other place or time.

5. The fifth category of factual assertions is the assertion in paragraph 3 (g) that Anthranilic Acid is a precursor to methaqualone and/or mecloqualone and that the only other uses for Anthranilic Acid besides the manufacture of these controlled substances is in the manufacture of analgesic drugs and certain veterinary products.

First it should be noted that this paragraph's factual assertions are hearsay in nature and must thus meet the two-fold test of Aguilar v. Texas, supra. In fact they are double hearsay from Mr. Paul DeZan, Chemist, Drug Enforcement Administration, to Special Agent Lon Sturrock and then to the affiant.

At the first stage of the Aguilar test, the Affidavit clearly does not

present any factual basis for Mr. De Zan's belief that Anthranilic Acid is a precursor of these controlled substances or that the only other use of Anthranilic Acid besides the manufacture of these controlled substances is in the manufacture of analgesic drugs and certain veterinary products. Nor does the Affidavit present facts indicating that Mr. DeZan is either reliable or credible in making these factual assertions. The mere fact that he is identified as a chemist does not automatically establish him as a credible and reliable declarant, particularly with respect and regard to the assertions about the various legitimate uses of Anthranilic Acid contained in paragraph 3 (g) (2). In fact, Mr. De Zan is in error concerning the factual assertions contained in this paragraph 3 (g) (2) and the defendant Newman is prepared to offer testimony to that effect.

In short, there is no showing in the Affidavit of the factual basis for the assertions made in paragraph 3 (g) nor is there any showing that the hearsay declarant Paul De Zan is either reliable or credible in making these assertions. They may not therefore be considered in determining whether there was probable cause to issue the search warrant in this case.

Even if they were to be considered in the determination of probable cause they do not establish that probable cause. The assertion in paragraph 3 (g) (1) as to the manufacturing process for methaqualone and/or mecloqualone only establishes the ingredients necessary for such a manufacturing process. It does not show that such ingredients were all

on the premises at 209 Wolf Road, Colonie, New York on December 18, 1975 and, in fact, there was no such showing here or anywhere else in the Affidavit. Furthermore, the assertions of paragraph 3 (g) (2) are, as previously noted, factually inaccurate since there are a great many other legitimate uses for Anthranilic Acid other than those indicated and in any case they do not show or indicate in any way that methaqualone or mecloqualone was on the subject premises on December 18, 1975 or that the Anthranilic Acid that was alleged to be there on that date was being used for an illegitimate purpose.

In summary, the paragraphs 3 (g) (1) and 3 (g) (2) should not be considered in a determination of probable cause in this case since they do not meet the two-fold test of Aguilar v. Texas, supra., and, even if they did meet this test, they do not factually contribute to a determination of probable cause for the issuance of this warrant.

6. The last category of factual assertions in Special Agent Tripp's Affidavit is composed of the miscellaneous assertions in paragraph 3 (f) that certain windows in the subject premises were either boarded up by cardboard or had drawn venetian blinds and in paragraph 3 (l) that Peter Lazarski is a chemical technician at Hudson Valley Community College.

In the first case, there is nothing inherently suspicious about a house having some windows boarded up with cardboard or having drawn blinds. Common experience and observation makes this clear to all. The Affidavit does not even indicate how many or which windows were in either or both conditions and thus it provides no real factual assistance to a determination

of probable cause. These factual assertions do not even rise to the level of mere suspicion, much less legal probable cause.

In the second case, the fact that Mr. Lazarski was employed as a chemical technician at the time the warrant was sought is exculpatory rather than inculpatory in a probable cause sense. It provides a perfectly legitimate explanation for the delivery of Anthranilic Acid to his own home and for his alleged telephone contacts with various drug companies. As noted in United States v. Failla, supra, where the defendant had a Ph. D. in chemistry, it would have been reasonable for the agents to have checked to see if he had a license to conduct experiments with any controlled substance before obtaining a search warrant. This is particularly so in view of the open nature of Mr. Lazarski's activities that were previously discussed and the fact that he was legitimately employed at a nearby college as a chemist.

In sum, the factual assertions contained in the Affidavit of Special Agent Tripp, no matter in what combination they might be examined, do not establish reasonable grounds or probable cause to believe that methaqualone and/or mecloqualone together with the ingredients, instrumentalities and records necessary to manufacture and distribution of said controlled substances were present on the premises of 209 Wolf Road, Colonie, New York on December 18, 1975. As a result the search of these said premises on December 19, 1975 pursuant to the search warrant issued by the Hon. John H. Spain was in violation of Rule 41 of the Federal Rules of Criminal Procedure and the Fourth Amendment of the United States Constitution. All property or information seized as a result of

this search must therefore be suppressed as evidence in the prosecution of this case. Silverthorne Lubmer Co. v. United States, 251 U.S. 385 (1919) and Wong Sun v. United States, supra.

5. Even if the factual assertions contained in the Affidavit of Special Agent Tripp do support a finding of probable cause to issue a search warrant for the subject premises on December 18, 1975, they still do not provide reasonable cause within the meaning of Rule 41 of the Federal Rules of Criminal Procedure to permit the issuance of a search warrant permitting a nighttime execution.

The search of the subject premises pursuant to this warrant was therefore in violation of Rule 41 (c) of the Federal Rules of Criminal Procedure and the Fourth Amendment of the United States Constitution. The Fourth Amendment, of course, prohibits "unreasonable searches and seizures" and Rule 41 (c) in keeping with this Constitutional command provides that "the warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant and for reasonable cause shown, authorizes its execution at times other than daytime."

These provisions of Rule 41 (c) are in keeping with an historic aversion in the common law to nighttime searches. This historic reluctance to authorize nighttime searches except under exceptional circumstances has continued as part of our jurisprudence down to the present day and

finds its modern expression in Rule 41 (c) and the statutes of many states. United State ex rel Boyance v. Myers, 398 F 2d 896, 898. (1968).

The "reasonable cause" required to support the issuance of a warrant that may be executed at night is generally held to be that there is reasonable cause to believe that the evidence would be removed, hidden, or destroyed if the searching authorities were to wait to execute their search warrant in the daytime. United States ex rel Boyance v. Myers, supra., 899. Jones v. United States, 357 U.S. 493. (1958)

There was no "reasonable cause shown in the Affidavit signed by Special Agent Raymond W. Tripp on December 18, 1975 which supported the search warrant signed by the Hon. John H. Spain on December 19, 1975 except a conclusory statement in paragraph 3 (n) that "a night-day search warrant should issue, based on the foregoing, due to the moveable nature of precursors, manufactured controlled substances and laboratory apparatus used for the manufacture of said controlled substances."

There was no factual observations or other information presented to fulfill the Constitutional command that "reasonable cause be shown" except this conclusion and, since virtually any article or property is moveable given sufficient time and effort, the conclusion itself is devoid of any real meaning.

In fact, the information and observations developed in other parts of Special AgentTripp's Affidavit support the contrary conclusion, if true and believed, that the material and equipment to which the search warrant was directed was not easily moveable, concealable, or destructable, and further that there was no affirmative showing that there might be any effort to destroy, coneal or remove the evidence sought from the premises.

It is pointed out in paragraphs 3 (a) and 3 (c) of Special Agent Tripp's Affidavit that on December 11, 1975 20 bags of Anthranilic Acid weighing 110 lbs. each were taken in a truck from the BASF Wyandotte Corporation in Newark, New Jersey to the premises located at 209 Wolf Road, Colonie, New York. Thus the Anthranilic Acid cited in the search warrant weighed a total of approximately 2,200 lbs. If methaqualone and/or mecloqualone were being manufactured on the premises, the other chemicals and equipment necessary to produce these controlled substances would have to be proportional in size and scope. The truth of this assertion is clearly borne out by the huge scope of the inventory of material seized pursuant to the warrant and listed in Exhibit A. In short, all of the evidence and facts presented in the Affidavit of Special Agent Tripp as to the nature of the material sought supported the reasonable conclusion that the property sought to be seized by use of the warrant was neither easily destructible, concealable or removeable and that it would not be so destroyed, concealed or removed before a day warrant could be executed.

In addition to the nature of the material sought supporting this conclusion, it is further bolstered as a reasonable conclusion by the conduct of the parties themselves. The Affidavit of Special Agent Tripp in paragraph 3 (n) states that surveillance indicated that the Anthranilic Acid had not been removed from the premises from the date of delivery on December 11, 1975 to the date of the Affidavit on December 18, 1975. Paragraph 3 (d) of said Affidavit indicated that one of the parties under surveillance, Peter Lazarski lived in the premises under surveillance. There was no indication whatsoever from the conduct of the parties as reported by the Affidavit of Special Agent Tripp that the parties under surveillance would be likely to remove, destroy or conceal the material sought pursuant to the warrant before a day warrant could be executed. On the contrary, the conduct of the parties as established by surveillance indicated that they were not likely to do so and the evidence sought could by the use of a day warrant reasonably be secured.

Furthermore, the nature of the crime that the material sought in the warrant is related to does not support the reasonable conclusion that this material would be removed, destroyed or concealed before a day warrant could be executed. In fact, the manufacture of methaqualone and/or mecloqualone would of necessity be a complex and time-consuming operation that would require substantial amounts of time to conduct properly. It would be extremely difficult and highly unlikely therefore, considering the nature of the crime the material sought to be seized was related to, that the material sought would be removed, concealed or destroyed before a

AFFIDAVIT OF DONALD J. SHANLEY, ESQ., FOR DEFENDANT NEWMAN, IN SUPPORT OF MOTION

day warrant could be executed.

In sum, the quantity and type of material sought pursuant to the warrant, the conduct of the parties in control of this material, and the nature of the crime to which this material related all supported the reasonable conclusion that the material sought would not be removed, destroyed or concealed before a day warrant could be executed. There is no factual showing in the Affidavit of Special Agent Tripp that would provide "reasonable cause" for the issuance of a night warrant pursuant to Rule 41 (c) of the Federal Rules of Criminal Procedure. As a result, the material, leads, and all information seized pursuant to the execution of this search warrant should be suppressed. United States ex rel Boyance v. Myers, supra; Wong Sun v. United States, 1963; 371 U.S. 471 Siden v. United States, CCA Minn. 1925, 9 F 2d 241; United States v. Merritt, CCA Pa., 1961, 293 F 2d 742.

Donald J. Shanley
DONALD J. SHANLEY

Sworn to before me this 9th day of March, 1976.

Clarence E. Shanley
Notary Public-Rensselaer County
State of New York

NOTICE OF MOTION OF DEFENDANT WINNER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, and YOK LEE,

Defendants.

INDICTMENT NO. 75-CR-166

NOTICE OF MOTION

SIR:

PLEASE TAKE NOTICE, that upon the indictment filed herein and upon all proceedings and papers had herein, the undersigned, PAUL E. CHEESEMAN, ESQ., attorney for the defendant, NEIL B. WINNER, will move this Court on the 15th day of March, 1976, in Courtroom Number One at the United States District Courthouse, Post Office and Federal Building, Albany, New York, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard:

1. For an Order, pursuant to Rule 41(f) of the Federal Rules of Criminal Procedure, controverting the search warrant herein and directing the suppression of evidence seized thereunder, as well as other evidence, contraband, information or other matter disclosed or seized directly or indirectly, thereby.

2. For an Order, pursuant to Rule 41(f) of the Federal Rules of Criminal Procedure, directing the suppression of that portion of the Government's proof as may be found, after a

hearing, to have been obtained by an unlawful search and seizure of the defendant, NEIL B. WINNER, at the time of his arrest on December 19th, 1975.

3. For an Order, pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure, dismissing the indictment herein on the grounds that neither count of the indictment states facts sufficient to constitute an offense against the United States of America by the defendant, NEIL B. WINNER.

4. For an Order, pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, granting defendant, NEIL B. WINNER, a Bill of Particulars in response to a demand annexed hereto.

5. For an Order, pursuant to Rule 16(A)(1) of the Federal Rules of Civil Procedure, directing the Government to allow discovery and make disclosure as to the items specifically requested by counsel for defendant, NEIL B. WINNER.

6. For an Order reducing the amount of bail for the defendant, NEIL B. WINNER and establishing parole or such conditions and amount of bail and/or personal recognizance bond as the Court may deem reasonable and appropriate.

7. For an Order, pursuant to Rule 14 of Federal Rules of Criminal Procedure, directing severance of all further proceedings from the other defendants herein including the contemplated joinder of defendant MC DONALD.

DATED: Albany, New York
March 9, 1976

Yours, etc.,

MC DERMOTT & CHEESEMAN, ESQS.
PAUL E. CHEESEMAN of Counsel
Attorney for defendant NEIL B. WINNER
112 State Street, Albany, N.Y. 12207
Tel: (518) 465-7383

NOTICE OF MOTION OF DEFENDANT WINNER

TO: HON. JAMES M. SULLIVAN, JR.
United States Attorney
WILLIAM DREYER, ESQ.
Assistant United States Attorney
of Counsel
U.S. Post Office and Courthouse
Broadway
Albany, New York 12201

CLERK, UNITED STATES DISTRICT COURT
Northern District of New York
Broadway
Albany, New York 12201

AFFIDAVIT OF PAUL E. CHEESEMAN, ESQ., FOR DEFENDANT WINNER, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
-against-	INDICTMENT NO. 75-CR-166
PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER and YOK LEE,	AFFIDAVIT
Defendants	

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

PAUL E. CHEESEMAN, being duly sworn deposes and says:

1. I am an attorney-at-law duly admitted to practice in the State of New York and in the United States District Court for the Northern District of New York. I am the attorney of record for the defendant NEIL B. WINNER, and I make this affidavit in support of the relief sought in the attached Notice of Motion.

2. The defendant, NEIL B. WINNER, has heretofore been indicted by the United States Grand Jury and charged with unlawfully manufacturing Methaqualone, a controlled substance as set forth in Schedule II of Subchapter I of Title 21, USC, Chapter 13, in violation of Title 21, USC, Section 841(a)(1); Title 18, USC, Section 2 in conspiracy to unlawfully manufacture and distribute a controlled substance as set forth in Schedule II of Subchapter I of Title 21, USC, Chapter 13, to wit: a quantity

of Methaqualone, in violation of Title 21, USC, Section 841(a)(1).

3. That the defendant, NEIL B. WINNER, has pleaded not guilty and has been continued released on $25,000.00 secured bail bond awaiting trial.

4. In reference to defendant WINNER'S motion for an Order pursuant to Rule 41(f) of the F.R.C.P., controverting the search warrant herein, defendant WINNER claims standing to challenge the search warrant herein, although the premises searched were not his own, on the grounds that defendant WINNER, is here charged with the manufacture and possession of alleged controlled substances allegedly found at the searched premises, with conspiracy to possess with intent to distribute one such substance, and with acts of possession of substances allegedly found at the premises searched. (Jones v. U.S., 362 U.S. 257, 1960).

5. That the contents of the affidavits in application for the search warrant herein were insufficient to give probable cause that quantities of certain alleged controlled substances were present at the premises known as 209 Wolf Road, in the Town of Colonie, New York, on the 18th day of December, 1975, and that the reasons for this legal insufficiency are as follows:

(a) That suspicion or even "strong reason to suspect" criminal activity is insufficient to establish probable cause (Henry v. U.S., 361 U.S. 98, 101, 1959) and that no search warrant should issue unless and until "suspicions engendered...ripened into a judgment that a crime

was probably being committed". (Spinelli v. U.S., 394 U.S. 410, 418, 1969).

(b) Upon information and belief the only chemical substance known to have been in the possession of any of the co-defendants herein on December 18th, 1975 was Anthranilic Acid which is a remote precusor to Methaqualone and/or Mecloqualone and that Anthranilic Acid, itself, is not a controlled substance.

(c) Upon information and belief Anthranilic Acid must go through at least two major chemical transformations in combination with other chemicals before producing a controlled substance.

(d) Upon information and belief that contrary to the contents of the affidavit in support of the search warrant Anthranilic Acid has many lawful uses and is used in large amounts in various legitimate activities not limited to the manufacture of analgesic drugs and certain veterinary products. That its main use is in the manufacture of important dyes and that it is also used in the manufacture of perfumes, bird and insect repellents, fungicides and synthetic flavors.

(e) That the inclusion in the affidavit in support of the search warrant of the unsworn statement of Richard PRATT, Chief of the Wilmington, Vermont, Police Department is hearsay and conclusory in nature and legally insufficient to give cause to believe that a Wilmington Farm Co-op. did not legally exist.

(f) Upon information and belief the use of a fictitious name and/or organization to purchase a chemical substance that might possibly made into a controlled substance is at most a suspicious circumstance and does not establish probable cause. (U.S. v. Failla 343 F.Supp. 841, 1972). Similarly the use of a fictitious telephone number, if true, would also be a suspicious circumstance, and would not establish probable cause.

(g) In Failla, it was held that even where a chemist defendant ordered a precusor substance, with false credentials was observed to pick up the substance and bring it in a van type vehicle and bring it to the basement of a private home, was observed to come and go, and was seen working with laboratory equipment in the basement of the premises in the presence of the precusor substance, his arrest thereafter was held to be precipitous and without probable cause. The ordering of the precusor substance, even under a false name and apparently false credentials was held to have been merely suspicious and insufficient to constitute probable cause. The Court in that case took particular notice of the fact that the defendant had not been seen in possession of, manufacturing or selling any controlled substance and it is submitted that such is clearly the case here. The Court also made note that the agents had failed to allege and demonstrate that the precusor substance

was not being used subject to license, an allegation also here absent, and of particular consequence where the premises were leased to a chemical technician affiliated with a university, as is alleged to be the case here, and not a mere "hobbyist" as defendant Failla had been described.

(g) The affidavit in support of the application for the search warrant herein states a reasonable basis for believing that Anthranilic Acid was located on the premises at 209 Wolf Road, but the affidavit states no reason to believe any controlled substance i.e. Methaqualone and/or Mecloqualone would be found therein. In addition the affidavit states no reason to believe that the "paraphanelia, instrumentalities and related items used in the manufacture of Methaqualone" as well as certain "papers, books, and records related to the manufacture and distribution of Methaqualone," might be found on the Wolf Road premises.

(h) That the affidavit in support of the application for the search warrant herein fails to give reason to believe that other chemicals required in the manufacture of Methaqualone and/or Mecloqualone were present on the Wolf Road premises on December 18th, 1975. That the chemicals set forth in subparagraph (k) of the aforesaid affidavit are chemicals having many lawful uses, found in many laboratories, in themselves uncontrolled substances and purchased and apparently delivered to certain of the co-defendants, months before the application for the search

herein was made.

(i) That even if there was reason to believe that the chemicals set forth in paragraph (k) of the application for the search warrant herein were present on the Wolf Road premises on December 18, 1975, upon information and belief expert testimony will indicate that many lawful chemical combinations could have been made by the chemical interaction of those substances and a conclusion that only a controlled substance would be made from a combination of the chemicals has no basis in fact or law and is insufficient to establish probable cause.

(j) At the statement in subparagraph (f) of the affidavit for the application for a search warrant that "certain windows at 209 Wolf Road are boarded up and that other windows are covered by either cardboard or closed venetian blinds" is vague and ambivalent and is not damning enough even to raise a legitiment suspicion of criminal activity.

(k) At the statements in the affidavit in support of the application for a search warrant herein in reference to telephone records of three of the defendants (including WINNER) have little if any probative value in view of the dates when most of the phone calls were made in the absence of any information as to the content of such calls and the possibility of lawful uses of any of the chemicals that may

have been ordered (U.S. v. Ramirez, 279 F.2d 172 2nd. Cir., 1960, Sgro v. U.S., 287 U.S. 206 1932).

(1) That the statement contained in the affidavit in support of the application for the search warrant herein that defendant LAZARSKI is a chemical technician at the Hudson Valley Community College is not only of no probative value in establishing probable cause but is in itself partially exonerative as implied by the U.S. District Court for the Western District of New York in the case of U.S. v. Failla, cited supra.

6. The search warrant herein should be controverted and the evidence seized pursuant to that warrant should be suppressed because the affidavit in support of the application for said warrant fails to provide probable cause to believe that anything other than lawfully possessed Anthranilic Acid would be found upon the premises at 209 Wolf Road.

* * *

AFFIDAVIT OF PAUL E. CHEESEMAN, ESQ., FOR DEFENDANT WINNER, IN SUPPORT OF MOTION

* * *

WHEREFORE, defendant NEIL B. WINNER respectfully requests the Court to grant the relief prayed for in the attached Notice of Motion.

DATED: Albany, New York
March 9th, 1976

McDERMOTT & CHEESEMAN, ESQS.
PAUL E. CHEESEMAN, ESQ.
Office and P.O. Address
112 State Street
Albany, New York 12207

Sworn to before me this
___ day of March, 1976.

Notary Public

VIRGINIA
Notary Public
Residing in
Commission Expires March 30, 1976

TO: HON. JAMES M. SULLIVAN, JR.
United States Attorney
WILLIAM DREYER, ESQ.
Assistant United States Attorney
of Counsel
U.S. Post Office and Courthouse
Broadway
Albany, New York, 12201

CLERK, UNITED STATES DISTRICT COURT
Northern District of New York
Broadway
Albany, New York 12201

NOTICE OF MOTIONS OF DEFENDANT McDONALD

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

MARK MC DONALD.

Notice of Motions

CR No. 76-CR-15

CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK:

UNITED STATES ATTORNEY FOR THE NORTHERN
DISTRICT OF NEW YORK (A.U.S.A WILLIAM J. DREYER):

SIRS:

PLEASE TAKE NOTICE, that upon the indictment herein filed the motions with supporting papers and exhibits hereunto annexed, and all prior papers and proceedings heretofore had in connection with this indictment and related indictment CR No. 75-CR-166, the defendant above-named will move this Court before HON. JAMES T. FOLEY, at the United States Post Office and Courthouse, Broadway, Albany, New York, on the 15th day of March, 1976, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard, for the following relief:

(1) An order, pursuant to Rule 41(f) of the Federal Rules of Criminal Procedure, controverting the search warrant herein and directing the suppression of evidence seized thereunder on or about December 1?, 1975, at 209 Wolf Road, Albany, New York, together with any and all other evidence and/or testimony obtained or discovered by the executing officers and

the United States Attorney by exploitation of evidence and information illegally obtained in the course of the execution of said warrant; and for

(2) An order, pursuant to Rule 41(f) of the Federal Rules of Criminal Procedure, suppressing any and all real evidence, testimony, or other proof as may be found, after a hearing, to have been unlawfully obtained by search and seizure in the course of the attempted arrest of defendant MARK MC DONALD and the arrest of a certain YOK LEE at premises located at 169 Second Street, Troy, New York on or about December 19, 1975, together with any and all other evidence and/or testimony obtained or discovered by the arresting officers and the United States Attorney by exploitation of evidence and information illegally obtained in the course of such arrest, search and seizure; and for

(3) An order, pursuant to Rules 7 and 12 of the Federal Rules of Criminal Procedure, directing, after an in camera inspection of grand jury minutes by the Court, that indictment CR. No. 76-CR-15 filed against defendant MARK MC DONALD, be dismissed, and an order dismissing the indictment as jurisdictionally defective; and for

(4) An Order, pursuant to Rules 7(f) and 16(a) (1) of the Federal Rules of Criminal Procedure, directing that the United States Attorney file and serve upon counsel for

NOTICE OF MOTIONS OF DEFENDANT McDONALD

defendant a bill of particulars herein, and further directing the said United States Attorney to allow discovery and make disclosure as to the items specifically requested and set forth in the annexed motion papers, as well as any and all exculpatory matter within his knowledge or possession.

Dated: Albany, New York
March 10, 1976.

Yours, etc.,

PAUL R. KIETZMAN
(for) ROSENBLUM & LEVENTHAL
Attorneys for Defendant MC DONALD
732 Madison Avenue
Albany, New York 12208
Telephone: (518) 463-1107

TO: WILLIAM J. DREYER, ESQ.
Assistant United States Attorney
for the Northern District of New York
U. S. Post Office and Courthouse
Broadway, Albany, New York 12210

HON. JOSEPH SCULLY, Clerk of the
United States District Court for the
Northern District of New York
United States Courthouse
Utica, New York

MOTION OF DEFENDANT McDONALD TO CONTROVERT SEARCH WARRANT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

MARK MC DONALD.

Motion to Controvert
Search Warrant
CR No. 76-CR-15

Defendant, MARK MC DONALD, by his attorneys, ROSENBLUM & LEVENTHAL, ESQS., hereby moves to suppress the evidence seized in course of the execution by certain federal and state law enforcement officers of a search warrant issued by HON. JOHN H. SPAIN, Federal Magistrate, on December 18, 1976, which directed a search of premises located at 209 Wolf Road, Town of Colonie, County of Albany and State of New York, and all further evidence obtained by exploitation of the fruits of said search, pursuant to Rule 41(f) of the Federal Rules of Criminal Procedure; and

Defendant further moves for an order controverting and quashing the aforesaid warrant; and defendant further joins in all similar motions directed against said warrant, search and sequelae thereto, made on behalf of defendants under indictment CR No. 75-CR-166, and any other person aggrieved thereby.

Annexed hereto is the affidavit of PAUL R. KIETZMAN, ESQ., submitted in support of said motion.

Dated: Albany, New York
March 10, 1976.

MOTION OF DEFENDANT McDONALD TO CONTROVERT SEARCH WARRANT

Yours, etc.

PAUL R. KIETZMAN
(for) ROSENBLUM & LEVENTHAL
Attorneys for Defendant MC DONALD
732 Madison Avenue
Albany, New York 1220[illegible]

TO: CLERK OF THE UNITED STATES DISTRICT COURT
for the Northern District of New York

UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF PAUL R. KIETZMAN, ESQ., FOR DEFENDANT McDONALD, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

MARK MC DONALD.

Attorney's Affidavit in Support of Motion to Controvert Search Warrant and Suppress Evidence

CR No. 76-CR-15

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

PAUL R. KIETZMAN, ESQ., being duly sworn, deposes and says:

1. That I am a member of the law firm of ROSENBLUM & LEVENTHAL, ESQS., attorneys of record for defendant MARK MC DONALD. I make this affidavit in support of the relief requested in the annexed motion to controvert and suppress.

2. I am familiar with the facts and circumstances of this prosecution insofar as they bear upon the issues presented by this motion by virtue of lengthy interviews with my client, inspection of the material forwarded by the United States Attorney's Office in compliance with the rules of this Court pertaining to pre-trial discovery, and certain inspections of investigative reports of the arresting officers granted by the Assistant United States Attorney in charge of this case. The foregoing is the source and grounds for all matters hereinafter set forth upon information and belief.

3. Defendant claims standing to challenge the search warrant herein, although the premises as to which the warrant was directed were not his own, upon the following grounds:

(a) Paragraphs "3" and "4" of the overt acts listed under Count II of indictment CR No. 76-CR-15 (as well as Count I) charges defendant with the manufacture and possession of eighty pounds of methaqualone, a controlled substance, the manufacture and possession of which is made a criminal offense by federal statute.

(b) The investigative report of DEA Special Agent Tripp of January 9, 1976, at paragraph 4 thereof, contains this agent's asserted observation that defendant MC DONALD "shared access to the 209 Wolf Road residence ..." in common with the defendants named in indictment CR No. 75-CR-166. Presumably, this observation will be used against defendant as proof of defendant's guilt on both counts of this indictment.

(c) The investigative report of DEA Special Agent Thomas Grieve of January 8, 197[illegible], at paragraph "4" thereof, contains the observations that on 12/16/75 two males "...testatively identified as Yok Lee and MARK MC DONALD..." arrived at the 209 Wolf Road premises and "...let themselves into..." said dwelling. Once again, said observations will unquestionably be introduced against defendant to establish joint

control of the premises and therefor his joint participation in the enterprises allegedly undertaken there by the defendants named in indictment CR No. 75-CR-166.

4. The United States Supreme Court in Jones v. U. S., 362 U. S. 257, made it plain that a defendant charged with possession of an article of evidence or contraband has standing to challenge the legality of its acquisition. More generally, the Court held upon the issue of standing that the government may not have the benefit of asserting inconsistent positions regarding possession of evidence or contraband and occupancy or control of premises. That is to say that the government may not assert, in the context of a suppression motion, that a defendant lacks the requisite interest in evidence or premises to confer standing to assert Fourth Amendment rights, and then in turn attempt to obtain a conviction at trial based upon that very possession and/or control requisite to a guilty verdict upon a charge. Therefore, in view of the plain import and nature of the government's proof as hereinbefore set forth, defendant MC DONALD must be found to have standing to challenge the instant warrant.

5. There are several defects upon the fact of the warrant and the application which deponent would call to the Court's attention. Firstly, Rule 41(d) provides that the warrant shall designate a federal magistrate to whom the war-

rant shall be returned. The instant warrant simply directs that return be made and the seized property be brought before "a federal magistrate". This defect by itself is surely not fatal but merely an indication of the superficiality of the government's attempt to comply with statutory and constitutional requirements.

6. Likewise, Rule 41(c) mandates execution of the warrant during the daytime absent a showing of reasonable cause for the necessity of execution at other times. Here the affiant states in one breath that the precursors and suspected contraband was present at 209 Wolf Road in huge quantities and had been so present for upwards of eight days. In the next breath the magistrate is asked to believe that a day-night warrant is imperative due to the "moveable nature" of the contraband and presumably the likelihood of its removal. In this and other respects, more fully delineated hereinafter it is plain that the magistrate in this case descended from a magisterial to a numsterial function in signing the subject warrant. Even grossly conflicting allegations were overlooked in the grant of authority by magistrate Spain.

7. As pointed out at length in the affirmation of David S. Michaels, Esq., in his suppression motion on behalf of defendant Yok Lee in indictment CR No. 7[illegible]-CR-166 (which will be heard along with the instant motions) the standards for

probable cause differ and are perceptibly more stringent with respect to possession of property such as anthranilic acid whi h is not contraband but at best mere evidence of some criminal activity than those standards applicable to possession of contraband. The principal difference, as it bears upon the cases at bar, is that in addition establishing probable cause that the "innocent" substance is present upon the designated premises it is also necessary to establish probable cause to believe that the substance is intended for use in some criminal act.

8. Here, obviously, the criminal act suspected was the manufacture of the controlled substances methaqualone or mecloqualone. It appears equally clear that the search did, in fact, turn up substantial quantities of controlled substances. However, a search can never be justified by what it turns up, by mere suspicion or even strong suspicion of wrongdoing, nor by even the utmost good faith belief of the affiant officers. Nothing short of the requisite quantum of probable cause can sustain a warrant.

9. Mr. Michaels ennumerates at some length the reasons for his belief that the affidavit of Special Agent Tripp falls short of that quantum of probable cause spoken of above. Deponent does not wish to burden the Court with an entire recapitulation of these reasons, but wishes only to join

in these contentions and request that they be considered, as well, on behalf of defendant MC DONALD.

10. Deponent would add only that the representations contained in paragraphs 3(g) (1) and (2) of Special Agent Tripp's affidavit, in light of the information presented in Mr. Michael's affidavit, amount to material misrepresentations of fact bearing upon issues highly germane to the determination of probable cause. This being the case, the Court should not sustain this warrant irrespective of the cumulative affect and significance of other allegations in the affidavit. People v. Alfinito, 16 N.Y. 2d 181; U. S. Marihart, F 2d (CCA 8 1974); U. S. v. Bowling, 351 F. 2d 236; Armour v. Salisbury, F. 2d (CCA 6 1974); U. S. v. Harwood, 470 F. 2d 322 (CCA 10); and U. S. v. Upshaw, 448 F. 2d 1218, 1221, fn. 3 (CCA 5).

11. The statement in paragraph 3(g) (2) of Tripp's affidavit to the effect that "...besides the manufacture of methaqualone and mecloqualone, the only other uses for anthranilic acid is in the manufacture of analgesic drugs and certain veterinary products," is not only highly misleading and inaccurate in substance it is also wholly incompetent in form. Not only is the information double hearsay (having allegedly come from chemist DeZan to Special Agent Sturrock and finally to Tripp) but the conclusions and opinions expressed therein are offered without any semblance of qualification of the source or establishing

his expertise. The fact that DeZan is alleged to be a chemist employed by the Drug Enforcement Agency does nothing to establish his expertise in the techniques used in manufacturing methaqualone and mecloqualone nor the primary uses of anthranilic acid. It would appear again from the allegations contained in Mr. Michael's affidavit that, in truth, anthranilic acid is a "precursor" of methaqualone to the same degree that fertilizer is a precursor of marijuana.

12. More importantly, it cannot accurately be supposed, nor is it the proper function of this court to suppose what result would have occurred had a neutral and detached magistrate been presented with an accurate opinion offered by a qualified expert. The significance of this portion of the affidavit cannot be minimized since, as pointed out hereinabove, the inference of criminal purpose in using the anthranilic acid was crucial to the determination of probable cause. This Court ought, therefore, to overcome the reluctance which many courts have previously expressed to permit an accused criminal to go free in order to sustain an abstract constitutional principle designed to protect the innocent and controvert the warrant herein.

13. Again, borrowing from Mr. Michael's research, the Court's attention is invited to the brother Court's decision in U. S. v. Failla, 343 F. Supp. 841 (WDNY 1972), and the remarkably similar facts and circumstances under which they

Court suppressed the seized evidence. As Mr. Michaels correctly points out, the accurate information presented to the magistrate in the case at bar was, if anything, somewhat less incriminating than that which the arresting officers in Failla possessed at the time of the defendant's arrest and which that Court found wanting. Clearly, the facts of this affidavit fall far short of those presented in U. S. v. Welebir, 498 F. 2d 346 (CCA 4 1974) and in U. S. v. Martin, 509 F. 2d 1211 (CCA 9 1975).

14. Again, deponent respectfully submits that this Court should not minimize nor lightly disregard the very real defects and factual shortcomings of the affidavit here challenged in an attempt to fit this case into precedent factual patterns under which warrants were sustained. In such a sensitive area of the law no encroachment beyond a prior decision should be undertaken without the most compelling of reasons. As the United States Supreme Court observed in Boyd v. U. S., 116 U. S. 616, 635, "...illegitimate and unconstitutional practices get their first footing ... by silent approaches and slight deviations from legal modes of procedure."

15. A further misleading aspect of Tripp's affidavit is paragraph "2", in its entirety, in which Tripp baldly asserts his belief that not only anthranilic acid but also methaqualone, meclaqualone, n-acetyl anthranilic acid, ortho-foluidine, acetic

anhydride, phosphoryl chloride, polyphosphoric acid, acetic acid, various chemicals and solvents, apparatus, paraphernalia, papers, books and records relating to the manufacture and distribution of methaqualone and mecloqualone. These assertions are simply not grounded upon any facts whatsoever presented in the balance of Tripp's affidavit. In fact, the only basis whatsoever for concluding that anything other than anthranilic acid (a legally possessed substance) would be found at 209 Wolf Road are the highly innacurate contents of subparagraphs 3(g) (1) and (2), once again underscoring the significance of the misrepresentations found therein.

16. That Magistrate Spain relied heavily upon the above-cited paragraphs is evident from the fact that the second typed paragraph of the warrant recites almost verbatim the substances listed in paragraph "2" of Tripp's affidavit. Not incidently this recitation in the warrant itself may well render the warrant void for its impermissible breadth of subject matter. That is to say that this Court is not now free to narrow the permissible scope of the warrant. The warrant stands or falls in its entirety and if it authorizes a search for items and instrumentalities as to which no probable cause was established, deponent submits that it is void.

17. Again, as pointed out by Mr. Michael's affirmation, the facts contained in paragraph "3(f)" of Tripp's

affidavit are without significance, except the wholly unnatural significance which the affiant urges the magistrate to place upon them. Deponent is informed and verily believes that no windows of said residence were "boarded up" and that the fact that defendant Lazarski may have chosen to protect his unquestioned right to privacy with cardboard or venetian blinds in some of his windows would have been rather more understandable had the affiant bothered to inform the magistrate that 209 Wolf Road is located no more than 30 feet from a major six-lane thoroughfare on the west, and no more than 10 feet from a massive hotel-motel-restaurant complex parking lot on the south and east. The very idea that obscuring the windows of one's private residence could ever form any element of probable cause for government agents to search those premises is utterly abhorrent. This Court should, it is respectfully submitted, long ponder any holding in this case which countenances such an assertion.

18. Much of the further information contained in Tripp's affidavit is not only stale, in most cases unrelated to the premises to be searched, and scarcely even suspicious, but more importantly, the affidavit as a whole, even with the misrepresentations contained therein, still fails to furnish probable cause to sustain the instant warrant. Deponent submits, therefore, that this warrant should not have issued and should now be controverted.

AFFIDAVIT OF PAUL R. KIETZMAN, ESQ., FOR DEFENDANT McDONALD, IN SUPPORT OF MOTION

19. It scarcely need be stated that every other scrap of evidence against defendant MC DONALD was obtained within hours after the execution of this warrant and by direct exploitation of the fruits of that search (including, most notable, Lazarski's alleged confessions.) This further evidence must be suppressed as well by force of the United States Supreme Court's decisions in Silver-Thorne Lumber Co. v. U. S., 251 U. S. 385 (1919) and Wong Sun v. U. S., 371 U. S. 471 (1963).

Paul R. Kietzman

Sworn to before me this
10th day of March, 1976.

Notary Public, State of New York
Qualified in Albany County
My Com. Exp. 3/30/77 .

GOVERNMENT'S MEMORANDUM OF LAW IN OPPOSITION TO MOTIONS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, YOK LEE and MARK MC DONALD,

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MEMORANDUM OF LAW

Cr. No. 75-CR-166
Cr. No. 76-CR-15

PRELIMINARY STATEMENT

This Memorandum of Law is submitted in opposition to the defendants' motion to suppress evidence obtained as a result of the execution of a search warrant at 209 Wolf Road, Colonie, New York, on December 19, 1975. Inasmuch as the defendants have been charged with conspiracy to distribute methaqualone and notwithstanding Mr. Lazarski's apparent possessory interest in the premises searched and items seized, the United States does not oppose the claims of standing asserted by Messrs. Newman, Winner, McDonald and Lee.

STATEMENT OF FACTS

Since the District Court, in determining whether probable cause existed for the issuance of the search warrant, may consider only the facts within the four corners of the affidavit presented to the issuing Magistrate, Aguilar v. Texas, 378 U.S. 108 (1964), this Memorandum will set forth only those additional facts which pertain to the execution of the warrant at the home of Mr. Lazarski on December 19, 1975.

At approximately 3:45 a.m. on December 19, 1975, while in possession of a search warrant, Special Agents Lon Sturrock and Raymond Tripp, United States Department of Justice, Drug Enforcement Administration, knocked on the front door at 209 Wolf Road

and in rai. d voices identified themselves and stated that they had a warrant. New York State Police Investigator Elliot and others were located at another entrance to the house and were in view of Sturrock and Tripp. There being no response from within the house, Agent Sturrock continued to knock and to shout his identity from his position outside the house. After Mr. Sturrock repeated the knocking for approximately two to three minutes, he and Agent Tripp heard movement or noises within the house. At approximately the same moment, Police Officer Elliot, hearing movement within the house, shouted "Police". When no one appeared at the front door, Agent Sturrock entered by breaking the front door with his shoulder. Sturrock confronted Mr. Lazarski and reannounced his identity and purpose.

ISSUES

I. Whether the affidavit presented to the Magistrate was sufficient to warrant a finding of probable cause for the issuance of the warrant.

II. Whether the failure to respond to the Agent's knocking at the door of the premises and the announcements of identity and purpose warranted a forced entry under the provisions of Title 18 U.S.C. Section 3109.

ARGUMENT

POINT I. THE AFFIDAVIT WAS SUFFICIENT TO WARRANT A FINDING OF PROBABLE CAUSE FOR THE ISSUANCE OF THE SEARCH WARRANT.

A principal contention of the Defendants is that the affidavit in support of the search warrant is insufficient because it establishes, at most, that one precursor substance to methaqualone, that is, anthranilic acid, was present at 209 Wolf Road at the time of the application for the warrant. In this regard, defendants

rely on U.S. v. Failla, 343 F. Supp. 831 (W.D.N.Y., 1972), wherein the Court held that there was no probable cause to arrest a defendant who (1) ordered and obtained a precursor to amphetamine; (2) used another's name to place the order; (3) maintained a laboratory in his basement, and (4) was known to have a Ph.D in Chemistry. The Court found that ordering a single precursor to amphetamine may constitute a "red flag" to an alert agent, but that the totality of circumstances, which included ostensibly lawful activities, did not develop far enough to permit the discovery of circumstances constituting probable cause.

With respect to the issue of precursors, and putting aside for the moment the probative significance of the totality of suspicious and innocent acts, the United States contends that the affidavit recites sufficient information about precursors to warrant a finding of probability of the criminal activity alleged in the affidavit. First, the affidavit established (3 (a)(b)(c)) that Craig Newman delivered by truck to 209 Wolf Road in Colonie, New York, 2200 lbs. of anthranilic acid. Second, the affidavit establishes (g(1)(2), that anthranilic acid, which concededly has lawful uses, is a precursor to methaqualone. Third, the affidavit establishes (g(1)) that to produce methaqualone, anthranilic acid is combined with acetic acid or acetic anhydride to produce acetyl - anthranilic acid, which, in turn, is combined with ortho-toludine and chloryl chloride. The affidavit then establishes (para (k)), that Craig Newman, whose phone was used to call Conso Lab Supply Company, Whippany, New Jersey, in June and July, 1975 (para J(3), obtained from Conso lab supply in May, 1975, four kilos of anthranilic acid, and on July or August 19, 1975, quantities of either, sodium, sodium acetate, and acetic anhydride; and,

further, ordered from Conso Lab Supply in June, 1975, 48 Kilos of ortho-toludine.

While it is clear that the affidavit traces to Craig Newman the ordering or possession of all or most of the chemicals which are used in the manufacture of methaqualone, the defendants assert that such recitals are not probative because (a) the possession or ordering of other ingredients four to six months prior to the search constitutes stale information, and (b) the ordering or possession of other precursors are not shown to be directly connected with the premises searched.

Although probable cause to justify the issuance of a search warrant must exist at the time of the issuance of the warrant, it is recognized that

> the vitality of probable cause cannot be quantified by simply counting the number of days between the occurrence of facts relied upon and the issuance of the affidavit. Together with the element of time we must consider the nature of the unlawful activity. Where the affidavit recites a mere isolated violation it would not be unreasonable to imply that probable cause dwindles rather quickly with the passage of time. However, where the affidavit recites facts indicating activity of a protracted and continuous nature, a course of conduct, the passage of time becomes less significant. U.S. v. Johnson, 461 F.2d 285, 287 (10th Cir., 1972).

Another Court, in U.S. v. Harris, 482 F.2d 1115 (3rd Cir., 1973), also has opined that staleness depends not so much upon the passage of time, but rather on the nature of the activity in question. This being the rule, the issue of staleness requires review on a case-by-case basis. 482 F.2d 1115, at 1119.

As to the issue of staleness in the instant case, considering the number and amounts of precursors ordered, the identification of Newman as the party obtaining or ordering precursors earlier in time and on December 11, 1975, the frequency of phone calls placed to Conso Lab Supply Company and other laboratory supply companies from the phones of Craig Newman and Peter Lazarski over a period of months as stated in paragraphs J(1)(3), and the logical

inference which may be drawn from the factual showing in the affidavit that Newman possessed and/or ordered all of the essential precursors to Methaqualone, the United States submits that the Magistrate properly superimposed upon the events immediately preceding the submission to him of the affidavit the factual information about prior activity such that he could conclude that it was probable in light of other recitals, discussed below, that the anthranilic acid delivered to 209 Wolf Road on December 11, 1975, was to be used in the criminal activity alleged. Additionally, while the United States recognizes the inherent problem facing the District Court in Failla, supra, wherein the possession of a single precursor was alleged as an element of probable cause, it is clear from those cases concerning unlawful manufacture of narcotics that the Courts neither require a showing that every essential precursor chemical was on the premises, nor require the United States to negate conclusively the probability that the possession of such chemicals, which individually may be innocent substances, was non-criminal. See e.g., U.S. v. Noreikis, 481 F.2d 1177 (7th Cir., 1973); vacated on other grounds, as to one defendant, 415 U.S. 904, 1974); U.S. v. Moore, 452 F.2d 569 (6th Cir., 1971); U.S. v. Smith, 499 F.2d 251, 254 (7th Cir., 1974); U.S. v. Welebir, 498 F.2d 346 (4th Cir., 1974); U.S. v. Martin, 509 F.2d 1211 (9th Cir., 1975).

The United States submits that the Magistrate's responsibility in reviewing the affidavit was to determine whether probable cause existed to believe that the criminal activity alleged, manufacturing or attempting to manufacture a controlled substance, was taking place at 209 Wolf Road. In so determining the issue, the Magistrate was required to view the affidavit as a whole and to draw reasonable inferences from the affidavit in light of his experience. Cf. U.S. v. Pascente, 387 F.2d 923 (7th Cir., 1967)

cert. den. 390 U.S. 1005; U.S. v. Melville, 309 F. Supp. 829 (D.C.N.Y. 1970). An examination of the affidavit's component parts reveal sufficient information which, viewed as a whole, warranted the finding of probable cause. First, the affidavit establishes that on December 11, 1975, Craig Newman obtained (para 3(a)) 2200 lbs. of anthranilic acid and used a purchase order in the name of Wilmington Farm Coop, 10 Bryant Hill Road, Wilmington, Vermont. Second, the affidavit (para i) avers that Wilmington Farm Coop, Bryant Hill Road is a fictitious address. Third, Craig Newman used a rented truck to deliver the anthranilic acid to 209 Woli Road, and, after unloading the 20 bags of acid at the premises, returned the truck to the rental agency. Fourth, the affidavit establishes that the resident of the house, Peter Lazarski, (paras 2, 3d, and k,) was employed as a chemical technician. Fifth, surveillance established (3f) that windows were covered with cardboard or by closed blinds. Sixth, the affidavit established that on December 11, 1975, a car registered to one Neil Winner arrived at the premises (para 3(e)), and, (para 3(j)(2)), that from the telephone of Neil Winner there were calls to four chemical companies in July, 1975. Seventh, the affidavit established that on or about July 7, 1975, the BASF Wygndotte Corporation, New Jersey, (Ex B to affidavit) sold 440 lbs. of anthanilic acid to a party acting on behalf of the Wilmington Farm Coop., Bryant Hill Road, Wilmington, Vermont. Regarding the foregoing, the Defendants assert (1) that the acts established by the affidavit are innocent acts and that the citizenry cannot be accountable to police officers who draw inferences within the context of their occupational purpose; and (2) that information about suspicious circumstances reported by the affidavit and credited to others is not demonstrated,

within the affidavit, to be reliable. The defendants hen ask this Court to discard those facts in the affidavit which, when viewed on an individual basis, consist of innocent acts.

It is well recognized that corroborating information in an affidavit for search warrant or within an arresting officer's possession, may be made up of innocent or lawful acts. Newcomb v. United States, 327 F.2d 649 (9th Cir., 1964). In Newcomb, the Court stated this proposition:

> The question is what probative force they (lawful or innocent acts) have; not individually, but collectively, and as they fit into the jigsaw pattern of the entire picture. Id, at 651.

In Rubio v. United States, 404 F.2d 678 (7th Cir. 1968) the court stated,

> A probable cause conclusion may be drawn from the gestalt which a factual situation presents; that is, such a conclusion may be deducted from separate facts as they interrelate, even though such a conclusion could not be reached if the separate facts were evaluated on an individual basis.

In Martin, supra, the 9th Circuit said at p. 1213:

> We think that this is a case, like United States v. Patterson, 9 Cir., 1974, 492 F.2d 995, 997, in which "[t]he succession of superficially innocent events had proceeded to the point where a prudent man could say to himself that an innocent course of conduct was substantially less likely than a criminal one."

In the instant case, having superimposed the recent information set forth in the affidavit upon the information that all or most of the precursors to methaqualone had been purchased or ordered by Newman some months before, the Magistrate could draw a reasonable inference that the anthranilic acid was to be used in an unlawful activity at the premises as alleged. The anthranilic acid was purchased in a suspicious manner, and delivered to a private dwelling bearing no apparent connection with a farm cooperative or commercial enterprise; the premises was the residence of a chemist, whose phone toll records showed calls to

Conso Lab Supply Company, at which other precursors were purchased some months before; the truck in which the anthranilic acid was delivered was returned to the rental agency, giving rise to logical inference that the destination of Newman and the anthranilic acid had been reached. The inference is strengthened by the recited fact that the bags were not removed from the premises during surveillance. During surveillance, a third party, purported to be Neil Winner, entered the house, and his phone records showed calls to chemical companies. The windows of the house were covered by cardboard or blinds.

In sum, viewing the totality of the circumstances, and considering the logical inferences, the Magistrate could reasonably find probable cause to issue a search warrant. The suggestion of the defendants that other inferences could be drawn, such as the inference that delivery of anthranilic acid to 209 Wolf Road, could have been for the purpose of temporarily storing the substance for later delivery to Vermont, overlooks the function of the Magistrate, who is not expected to reach for external facts and build inference upon inference to create belief or conclude nonbelief as to probable cause. Rosencranz v. U.S. 356 F.2d 310, 317 (1st Cir., 1966); Lee Theatre Inc. v. Virginia, 88 S. Ct. 2103, 2104, (1968). Moreover, some of the very acts referred to as "innocent" or "innocuous," including "drawn blinds," have been recognized and listed as factors which may be considered in determining probable cause. See U.S. v.Smith, supra, at p. 254. With respect to the quality of the affidavit, defendants may assert that errors were committed in recording dates of phone calls or purchases. While typographical errors may occur, the conclusion or inference to be drawn from such facts should not be undermined if a sufficient basis for such conclusions still

exists. Absent deliberate misrepresentation, a warrant is not defective because of the presence of typographical errors, honest error, or erroneous facts which are honestly believed. See e.g., U.S. v. Thomas, 489 F.2d 664 (5th Cir., 1974). As to the allegation that the information which affiant credits to third parties who spoke to him or other agents is conclusory and not demonstrably reliable, the United States points out that the affidavit is not based on information provided by informers. Instead, hearsay is credited to specific persons or to police officers engaged in the overall investigation. Consequently, the form and substance of the subject affidavit falls squarely within U.S. v. Ventresca, 85 S. Ct. 741 (1965).

Finally, the United States requests that Court construe the affidavit in the context of the judicial policy which favors search warrants. In Ventresca, the Supreme Court wrote:

> where circumstances are detailed, where reason for crediting the source of the information is given, and when a Magistrate has found probable cause, the Courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical rather than a commonsense manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants. 380 U.S. at 110.

In this Circuit, the Court of Appeals has reiterated the principle of the Ventresca case in U.S. v. Freeman, 358 F.2d 459 (1966), cert. den. 385 U.S. 882. The Court added, at 461,

> The standard to be used in reaching a determination must not be so stringent nor so technical as to discourage the use of search warrants.

POINT II: THE ENTRY OF THE PREMISES AT 209 WOLF ROAD WAS PROPER

Under the provisions of 18 U.S.C. 3109, an affirmative refusal of entry is not required prior to forced entry. The

Court of Appeals for this Circuit held in United States v. Viale, 312 F.2d 595, (1963). At page 602 n. 6, that forced entry by Federal officers with a warrant was proper when they stated their purpose, waited a minute or two, and heard no answer or movement within. Other Circuits have also permitted forced entry after an "implied refusal." See U.S. v. Auguello, 368 F.2d 694 (3rd Cir. 1966); U.S. v. Pratter, 465 F.2d 227 (7th Cir., 1972).

As to the entry occuring in the nighttime, see Gooding v. United States, 94 S. Ct. 1780, (1974), wherein the Supreme Court reviewed the standards for nighttime searches with warrants in narcotics cases and concluded, inter alia,

> that 21 U.S.C. Section 879 (a) requires no special showing for a nighttime search, other than a showing that the contraband is likely to be on the property or person to be searched at that time. ID, 1794.

CONCLUSION

In accordance with the foregoing the United States requests that the Court deny defendants' motions to (1) controvert the search warrant and (2) to suppress evidence obtained as a result of the execution of the warrant.

JAMES M. SULLIVAN, JR.
UNITED STATES ATTORNEY
Attorney for United States of America
Northern District of New York
U.S. Court House and Post Office
Albany, New York 12207

BY William J. Dreyer
WILLIAM J. DREYER
Assistant U.S. Attorney

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED
SEP 1 1976
AT ____ O'CLOCK ____ M.
J. R. SCULLY, Clerk
ALBANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

- against -

PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, YOK LEE and MARK MC DONALD,

Defendants.

- -x

75-CR-166
76-CR-15

Proceedings in the above-entitled matter came on before the United States District Court, Northern District of New York, Federal Building, Albany, New York, on April 5, 1976, before the HONORABLE JAMES T. FOLEY, United States District Judge, Presiding.

VOLUME I

A P P E A R A N C E S:

HONORABLE JAMES M. SULLIVAN, JR., United States Attorney, Northern District of New York, Federal Building, Syracuse, New York, Attorney for Plaintiff, By: WILLIAM F. DREYER, Assistant United States Attorney, Of Counsel.

- and -

E. STEWART JONES, ESQ., Jones Building, 28 Second Street, Troy, New York 12181, Attorney for Defendant Lazarski, By: E. STEWART JONES, JR., ESQ., Of Counsel;

SHANLEY AND SHANLEY, ESQS., 35 First Street, Troy, New York 12180, Attorneys for Defendant Newman, By: DONALD J. SHANLEY, ESQ., Of Counsel;

MC DERMOTT AND CHEESEMAN, ESQS., 90 State Street, Albany, New York, Attorneys for Defendant Winner, By: STEPHEN HERRICK, ESQ., Of Counsel;

DAVID S. MICHAELS, ESQ., 342 Madison Avenue, New York, New York 10017, Attorney for Defendant Lee;

ROSEMBLUM AND LEVENTHAL, ESQS., 732 Madison Avenue, Albany, New York, Attorneys for Defendant McDonald, By: PAUL KIETZMAN, ESQ., Of Counsel.

THE COURT: I intend to conduct this matter in a formal manner.

MR. JONES: Your Honor, everyone is here in the building, sir, and will be in shortly.

THE COURT: Mr. Dreyer, I think that we should first go to the motions, unless there is some agreement on them, because we have a great number of motions with all kinds of subdivisions and a great number of attorneys here.

First, I think that the Clerk should take all of the appearances.

For the Defendant Mark McDonald, please?

MR. KIETZMAN: I am Paul Kietzman, of Rosemblum and Leventhal, and the Defendant will not appear here this morning, and I do have an Affidavit especially waiving his right to be here this morning.

MR. JONES: I am E. Stewart Jones, for the Defendant Lazarski.

MR. SHANLEY: I am Donald Shanley and I represent the Defendant Newman, who is in person in the courtroom.

THE COURT: Is your client present, Mr. Jones?

MR. JONES: Yes, with his mother and father.

MR. SHANLEY: Mr. Newman is present

and associated with me is Mr. Weisman, Herman L. Weisman from New York City.

MR. HERRICK: I am Stephen Herrick, of Counsel for Mr. Winner, and he is personally present here today.

THE COURT: How about Defendant Lee?

MR. MICHAELS: I am David Michaels from New York City for Defendant Lee, and he is present here today.

THE COURT: Let's first see what agreement there is here.

First, an Order has just been handed up to the Court, and maybe Mr. Dreyer will agree to it, about the change of bail posting.

MR. DREYER: Yes. The last time the Defendants appeared in Court, the Government agreed that all of those Defendants other than Mark McDonald would be released on the same conditions that Mr. Craig Newman has been previously released on.

Accordingly we consented to a $25,000 bail with a 10 percent deposit.

THE COURT: And do you have those Orders?

MR. DREYER: Yes.

THE COURT: I will sign it and file it with the Clerk.

The Order is for all of the Defendants, I believe.

You gentlemen may have copies of this, that has been submitted to me whereby your experts can inspect and examine the quality of this controlled substance, and you are to get your experts at least five, and not more than seven ounces of the alleged -- how do you pronounce that?

MR. DREYER: I believe it is methaqualone.

THE COURT: Do you all agree that I sign this Order?

THE CLERK: I believe it is unanimous, your Honor.

THE COURT: I read the memorandum of law from Mr. Dreyer over the week-end, and I think that the important part of this Affidavit, I think that you all have copies of it, don't you?

THE CLERK: Yes, they were all provided today.

THE COURT: He agrees, the United States consents to a severance of Mr. Lazarksi's trial from the trial of all of the other Defendants. I assume that this meets with your approval?

MR. KIETZMAN: No, your Honor, I would

consent for the purposes of conducting this hearing that the Defendant McDonald participate by myself, and that I would not withdraw my option to Mr. Dreyer's motion to consolidate Mr. McDonald's indictment. He, as you know, is indicted separately from the others and I would consent to submit on my papers, and I don't wish to argue, but I would not wish to withdraw my option of being tried with the others at this time.

THE COURT: I understand that, but at least the severance of Lazarski would take it out of the trial.

MR. KIETZMAN: I don't object to that.

MR. MICHAELS: We have no objection to that severance of the Defendant Lazarski, your Honor, but in the matter of similar to that presented by Mr. Kietzman, we also don't oppose the sonsolidation of the separate indictment of Mr. McDonald.

THE COURT: Who do you represent?

MR. MICHAELS: Yok Lee.

THE COURT: I have read the papers and I am experienced with the law of consolidation and enjoiner, and I am going to grant the

motion to consolidate. That means that I have held that there will be a severance of Lazarski, but a consolidation of all of the trials. That is McDonald with the other Defendants, except Peter M. Lazarski.

And now you need an Order, and maybe you should have one.

MR. DREYER: We will prepare an Order.

THE COURT: This is going to be a very complicated record.

MR. DREYER: We will submit an Order.

THE COURT: Is there anything else, and I will ask Mr. Dreyer first, for which there is agreement here?

MR. DREYER: I think that we have exhausted the agreements, your Honor.

However, there is one matter that we can take up first, I believe, and that is the question of whether or not to defer the question of the admissibility of Mr. Lazarski's statements to a future time, namely, until his trial, since the Court has already ruled that his case will be severed from the trials of the others, and the Government so moves at this time to defer any hearing on that issue until the time of Mr.

Lazarski's trial.

THE COURT: Didn't you file a separate Affidavit on that?

MR. DREYER: Yes, your Honor. That wa filed and provided to the Court this morning.

MR. JONES: I realize that this is consistent with the policy in this Court, Judge, but I would ask that the hearings and the trial not be piggy-backed to the extent that Mr. Lazarski's right to a fair trial, an adequate opportunity to prepare and review the evidence be jeopardized. I don't want to come in here and pick a jury in the morning, and have the hearing in the afternoon and start the proof the following day.

MR. DREYER: We would agree to that.

THE COURT: I don't know where the cases will be tried. Do you have a question here of local publicity and all of the reporters are here today? Maybe you would like to try the cases in Syracuse or Auburn? It is a fair distance from here, and maybe they didn't read about it.

MR. JONES: That all depends on the Judge.

THE COURT: I don't know who it will be. But I think that I will do that. I will defer it because according to our practice we try to give

enough time before the starting of the trial, and the main reason for that, as you know, is that our witnesses are congregated, and it has worked well.

MR. JONES: I have no quarrel as long as I and Mr. Lazarski are not prejudiced by the problems of a hearing and the trial.

THE COURT: You may need an Order here.

MR. DREYER: We will submit an Order on that.

THE COURT: I will grant that.

MR. DREYER: The second order of business concerns the Search Warrant and the Affidavit for the Search Warrant, and the Government has conceded that all Defendants have standing to challenge the validity of the Search Warrant.

Now, the Government takes the position that if the Search Warrant is controverted, that the Government will not be in a position to move forward so we think that this ia an appropriate time to consider the Affidavit and the quality of the Search Warrant, that is this afternoon.

Mr. Michaels and the other Attorneys have informed me that there are two witnesses present for the Defendants to testify on the Affidavit in support of search.

Accordingly we would move to consider those

witnesses first, and then move on to other matters which appear in the motion papers of the Defense Counsel, and the United States thereafter, after they have completed their testimony.

THE COURT: Well, I would much rather get into things that are common instead of getting into the Search Warrant question. I have had experience with Search Warrants. The discovery proposition is involved because your memorandum of law is quite elaborate on discussing that. I would like to find out why the Defense Attorneys aren't satisfied, and maybe they are satisfied now.

MR. KIETZMAN: We have not had a long enough time -- I personally have not had enough opportunity to review his papers to be in a position to determine whether we are satisfied or not, and I would request -- perhaps the other Attorneys would join me in that feeling.

I have had the Affidavit and the memorandum of law, and the exhibits annexed for a period of no longer than an hour and a half now, and that has not given me sufficient time to compare that with my requests, and it may be that I would have no further requests for discovery, but I can't

determine that at this time.

THE COURT: Mr. Jones?

MR. JONES: Well, we will all have to come back here tomorrow morning. I have had no opportunity.

THE COURT: It is quite detailed, and our policy of our prosecution, particularly Mr. Dreyer is to open up, and give most of the particulars of this trial.

I will allow you time to look it over. Did you only get it this afternoon?

MR. JONES: About one o'clock this afternoon.

MR. SHANLEY: The same thing, your Honor. I got it about 1:00 or 1:15 this afternoon.

MR. MICHAELS: I received the papers at 9:30 this morning. I have had a chance to compare, but I have not yet had an opportunity to confer with the other Attorneys with regard to the matters which appear to remain outstanding and in controversy. Accordingly, I would like to reserve the opportunity to reply with regard to those few specific remaining areas.

MR. HERRICK: I received Mr. Dreyer's papers this afternoon and there were a few items that he said were not available or not known at this

time, and I would also request either tomorrow morning or until the return date of this proceeding to respond. I don't know whether they are worthwhile in pressing. I think that everybody has been covered, but I am not sure at this time.

THE COURT: It is difficult for me to find the time -- there is a jury trial on, and the lawyers have been trying for three days, and they are from Washington and Chicago, and witnesses are coming from all over the country, and so, Mr. Jones, I know that you are busy in a trial on another case and is tomorrow the only free day that you have?

MR. JONES: Yes. We are off until Wednesday morning at 9:30.

MR. DREYER: The Government is also in a position to call a chemist tomorrow at nine o'clock in the morning, if that need arises, a United States Government chemist, and we have not made that decision yet, and if we can work it in tomorrow --

THE COURT: (Interrupting) No, I would like to start early tomorrow morning, but I have to go to another appointment and I do not know if I can

make the time. 9:30? I will see what we can do. I will let you lawyers read all of this discovery things overnight, and decide what you want to do.

MR. MICHAELS: There are two expert witnesses present on behalf of the Defense who have come more than 200 miles to be here today. I wonder whether it might be possible to take their testimony, and then if the Court finds insufficient time to proceed to other questions related to the Warrant, that we might then defer it so that the experts that have to return to other commitments might be allowed to do so.

THE COURT: Well, are they here on the Search Warrant proposition?

MR. MICHAELS: Yes.

THE COURT: And how many witnesses do you intend to call?

MR. DREYER: On the issue of the Search Warrant, we have some witnesses concerning the execution of the Search Warrant, and then e we intend to call a chemist in the event that the Government feels that it is necessary to do so, and that chemist is on call for nine o'clock tomorrow morning.

MR. JONES: The Search Warrant issue is a

critical issue in this case, Judge.

THE COURT: I sense that. I have gone over the papers carefully and read the case, and I think that the motion dismissing the indictment of Mark McDonald is denied. That is under our ruling case law.

This should also be put in your blanket orders.

There is a motion to dismiss on behalf of the Defendant Winner, and I deny that motion. I think that they are the only motions relating to the indictment as far as dismissing it.

MR. MICHAELS: The Defendant Yok Lee's position on inspection in this is with regard to the ground that there is undisclosed hearsay, and that was a motion on behalf of the Defendant Yok Lee.

THE COURT: What is your grounds to inspect the indictment, did you say? I didn't understand you.

MR. MICHAELS: Inspection of Grand Jury minutes under the controlling cases of U. S. against Seppa, and U. S. versus Maderus as regards to our contention, which we believe that we have established primarily as to the undisclosed

hearsay being provided to the Grand Jury as if it were a witness' testimony.

THE COURT: No, I deny the motion. I think that the law is quite settled on that, and the incompetent evidence, and so forth before a Grand Jury does not disqualify the indictment, itself.

I think that we should direct our attention now to your Search Warrant proposition, because upon that hinges, as I view it, the whole case. If they don't have that upheld, then everybody can go home. So how do you want to proceed on that? You all have motions on it.

Mr. Shanley, do you have a motion?

MR. SHANLEY: Yes, similar.

MR. KIETZMAN: Might I suggest that we have discussed, among the Attorneys and with the Government, the burden of going forward, as well as the burden of proof in this matter, and the Defense Attorneys, I believe, had decided that logic would dedicate that we get into the truth and materiality and sufficiency of the allegations of the Search Warrant before the matter of execution, and we would consent that the testimony of any executing officer be held in abeyance until

we got an opportunity to introduce our expert testimony.

I think that that was it.

MR. MICHAELS: Yes.

MR. DREYER: We agree with that.

THE COURT: That might be helpful.

We will take a 15 minute recess, and see if you can work out how you want to present this.

How many witnesses are you going to call this afternoon?

MR. MICHAELS: Two witnesses that will be called by the Defendants, your Honor.

THE COURT: And, Mr. Dreyer?

MR. DREYER: If we have time, your Honor, we will call Mr. Sturrock who cannot only testify to the execution, but other matters raised by other motions, namely an arrest of Yok Lee, and the seizure of certain evidence at the home of Yok Lee and Mark McDonald, and then in the morning we can --

THE COURT: (Interrupting) Well, that takes care of the rest of the day on them.

MR. DREYER: That will fill up today, and we can call the Government chemist.

THE COURT: You cannot fill up much of

tomorrow because we have a trial going on.

Now, we will take 15 minutes.

THE CLERK: Court stands in recess for 15 minutes.

(After a short recess the proceedings were resumed.)

THE COURT: Have you reached any agreement on how to proceed?

MR. DREYER: Yes. First, we request that the Clerk hand up to the Court the Affidavit in support of Search Warrant, and the Search Warrant, itself, and then Mr. Michaels will proceed with the format.

MR. MICHAELS: As the Court is aware, there are two expert witnesses who will testify in support of the Defense motion to controvert the Search Warrant.

With particular specifity, your Honor, the testimony here relates to Paragraph 3(g) of the Affidavit, in the application for the Warrant, and specifically paragraph 3(g)(1) and then 3(g)(2) which we believe goes directly to the question of the inherent probability in this matter.

Our first witness is Dr. Frank Soa.

That particular section, the subparagraph

we would like to note is located on page 4 of the application for the Warrant herein.

F R A N K S O A,

called as a witness, having first been duly sworn, was examined and testified as follows:

THE COURT: We have the Warrant and the Affidavit?

THE CLERK: Yes, sir.

THE COURT: This is what you are referring to, Mr. Michaels, the Warrant and the supporting Affidavit?

MR. MICHAELS: Yes, and particularly to Paragraph 3(g)(1) and (2) of the supporting Affidavit, and that is page 4.

THE COURT: All right, you may interrogate him.

DIRECT EXAMINATION

BY MR. MICHAELS:

Q Dr. Soa, because we are calling upon you as an expert witness, I would like to ask you first: State your credentials as a chemist, and as expert in the lawful uses of the substance anthranilic acid.

A I graduated from the University of Notra Dame in 1930, and received a Master's in 1931 and a Doctor of Philosophy Degree in 1933.

Q And were each of those degrees in chemistry?

A Yes, they were. A major in organic chemistry, and a minor in physical chemistry.

At the end of receiving my Doctorate, I taught at the University of Notra Dame, and in the graduate department of chemistry and the undergraduate department.

During this particular period, subjects that were of interest, I believe in this particular case where I taught advanced organic chemistry and dye chemistry.

Q And do those fields of chemistry which you have taught, and particularly the field of dye chemistry, do they have involvement concerning the chemistry and uses of Anthranilic Acid?

A Yes, Anthranilic Acid is used as a means, as a root to prepare various important dyes such as indigo dye, and it is also used for preparing certain so-called hazel dyes.

Q I want to get back to the question fo the uses of the substance, but let me continue on your credentials. Have you also published articles in technical journals on chemistry subjects related to this and other related fields of chemistry?

A Yes, I have. I published 38 papers, and scientific journals, and I have over 150 patents in the United

States, and in a combination with United States and foreign patents.

Q Are you familiar with the professional and chemical literature with regard to the subject of Anthranilic Acids and related substances?

A Yes, I am. I might even add that actually one of the publications that I referred to dealth directly with Anthranilic Acid. I had studied, I think it was in about 1936 or '36, I had studied the application of Anthranilic Acid and compared its rate of application with an isomeric material. This work was later published in a book on newer methods for organic synthesis.

MR. MICHAELS: If there is no voir dire, we will proceed on to other matters.

MR. DREYER: We stipulate as to Mr Soa's qualifications.

THE COURT: All right.

DIRECT EXAMINATION (CONTINUING)

BY MR. MICHAELS:

Q Dr. Soa, Iwant to ask you a series of questions about the substance Anthranilic Acid, and its uses. First let me ask you what the true chemical name of this substance is?

A Well, ortho-Amino-Benzoic Acid.

Q Spell it.

A O-r-t-h-o--A-m-i-n-o--B-e-n-z-o-i-c Acid.

Q Dr. Soa, is Ortho-Amino-Benzoic Acid an organic chemical?

A Yes, it is.

Q And is it within the family of organic chemcials that are derivatives of Benzine and Benzine rings?

A Yes, it is an aromatic compound.

Q And can you tell us -- excuse me?

A I felt I did not quite answer it exactly right, which of course, puts it into the organic chemcial area.

Q I see. Can you tell us, sir, whether Anthranilic Acid is a substance of limited utility, or one that can be used to make or manufacture a wide variety of different substances?

A It can be made and used to prepare a wide variety of organic chemicals.

Q Thank you. I want to ask you about that in more detail in just a moment. But first, I want to show you page 4 of the Affidavit in application for Search Warrant in this matter, and I want to direct your attention particularly to Paragraph 3(g)(2), which states as follows, and I quote, "Besides the manufacture of Methaqualone and Mecloqualone, the only other uses for Anthranilic Acid is in the manufacture of

analagist drugs and certain veterinary products."

I want to direct your attention to that particular subparagraph (offering), and I want to ask you whether in your opinion, that statement is true or false?

A That statement is incorrect.

Q And in stating that that statement is incorrect, can you inform us please of what the basis for your opinion is?

A Well, for one thing, Anthranilic Acid is used in various large quantities to prepare dye chemicals, and dye compounds.

Q Is that the largest use of Anthranilic Acid, by volume?

A Yes, it is one of the largest uses of Anthranilic Acid.

Q And what dyes is it used to manufacture?

A Well, one of the early and very important dyes was a group called the indigo dyes, which are very staple and substantive, and it is also used, of course, to prepare hazel dyes, and certain other type of vat dyes.

Q Excuse me, just a moment, please.

A Yes.

Q And included within the list of particular dyes which Anthranilic Acid is used to manufacture would be violet, scarlet, and indanthrene, and lacrid, and red aline, and a series of other dyes?

A Yes, I believe that all of those are included.
Q Well, are those dyes widely used in lawful commerce?
A Yes, they are.
Q Widely used to dye fabrics such as wool and other fabrics?
A Wool, and cotton, and synthetic fabrics could use that means.
Q And in your opinion there would be even a reasonable likelihood that the red and blue tie that I am wearing at the moment would have been dyed with a derivative of Anthranilic Acid?
A It is possible.
Q What are the other major uses, and by major, I mean uses consuming a substantial volume of this substance in lawful commerce?
A One area is in the preparation of saccharin, which is a sweetener and sugar substitute.
Q And is that a very substantial use?
A Yes, it is. It is a large amount of saccharin that is used, and there is a considerable quantity, quite a large quantity of saccharin made through the root of Anthranilic Acid.
Q And is there any other major use for Anthranilic Acid, and by major or general use I am referring to the volume consumed?

A Yes, there are a number. One is an anti-oxident, which has found considerable use in oils, lubricating oils, and to cut down the oxidation which, of course, cuts down on the life and increase corrosion on engines and things of that kind, plus --

Q (Interrupting) Excuse me for interrupting, but would that refer to a lubricating oil such as I would find in my car?

A Yes, it is used there, but along with that, I was going to explain that it is used to a very great extent on vegetable oils, to keep them from becoming rancid.

Q It is also used on food materials or agricultural products to prevent spoilage, as an anti-oxident?

A Yes, it is.

Q What are the other uses of this -- excuse me, withdrawn.

Would you say, Dr. Soa, in your opinion, that between the use of Anthranilic Acids and the manufacture of dye, and its use in the manufacture of saccharin, and its use as an anti-oxident, that those three items together in fact make up a majority of the use of the substance?

A No, question about it.

Q What are the other uses of this subject?

A Well, it has been used in many, many different areas. For example, in the steel industry, they have used

Anthranilic Acid when they remove scale. What happens there is in removing scale from steel you use a rather strong acid. Anthranilic Acid is in a group which has a tendency to retard the corrosive effect on the steel. It has been used as an additive to stabilize such polimeric material as polyethylene, and particularly in stabilizing -- toward light.

A lot of these various polimeric materials, when exposed to light have a tendency to change colors, and sometimes actually degrade. This has a tendency to stabilize such activity as that.

Q And the polimeric substance is a complex compound?

A Yes.

Q In general use?

A Oh, yes, yes.

Q Is it a substance also used as a fungicide?

A Yes, it has been used as a fungicide in a number of applications. I have even made fungicide from it.

Q Is it used as an insect repellant?

A There have been some -- there have been some examples that I have seen listed in the chemical literature where it has been used as an insect repellant.

Q Is it used in the chemistry of Alcyd Resins?

A Yes, to some extent in that particular case as an additive. Primarily for heat stabilization.

Q Is it used in the manufacture of modifers and sufactors?

A Yes, surfactors is a very important, very important and a very great use and a very large use, as a matter of fact.

Q What is a surfactor?

A That is a compound or composition which we add to a solution, and lowers the surface tension of that particular solution, which means this: That the substance will be wetted more readily by the use of that particular surfactor.

Q Is that perhaps why this substance is used in marine anti-fouling paints? I will withdraw that question if it is not clear. Is it a substance used in paints?

A Yes, it is. It is used in paints, yes, and it has been used in paints to help to cure, to shorten the time of cure of the finished coating composition, particularly.

Q Is it also used in the creation of perfumes and artificial flavors?

A Yes, it is. The ethers, particularly ethers have Anthranilic Acid.

Q That is a variation, more or less?

A Well, the ether is a reaction product between Anthranilic Acid, a combination of a group of

Anthranilic Acids, and by the elimination of one molecule of water you arrive at a compound called an ether. These materials have desirable aromatic properties, and depending upon the alcohol used, the properties of the finished material varies considerably. For example, ethyl, let's say Ethyl Anthranilics have been known to be used as a flavoring materia; grape flavor material. It has a light aroma, and menthol has been used both as grape and orange.

Q Also in pepperment flavor, too?

A Yes, that is right.

Q Now, is the reason for the diversity of uses of this substance the fact that it can serve other than as an acid or a base?

A It contribute a great deal to its versatility, yes.

Q And it is a substance which is versatile because it can act in entirely opposite matters, depending on circumstances, is that correct?

A It can act as an acid, or as a base, yes. And these materials are known as Amphteric compositions. These are compositions that have the ability, if you want to use it, to function either as an acid, or as a base.

Q All right, Doctor, up to this point I have asked you about the commercial uses, that is those uses of the

substance which are in large scale, economically practical uses.

But I want to ask you about whether this substance has, in fact, research uses beyond those uses specified?

A Well, I would say that it has many.

Q In fact, isn't it true that this is a substance which, in research, or exploratory use, because of its particular versatility could have hundreds of uses?

A Yes, it could.

Q I want to direct your attention to Paragraph 3(g)(2) and ask you whether, in your opinion, in fact this paragraph which states that the substance has, in addition to two prohibitive uses, only one other use and all they specified as being pharmaceutical. And I want to ask you whether Paragraph 3(g)(2) omits the vast majority of the uses of this substance?

A Yes, it does.

Q And in fact, is it true that those three uses taken together by volume make up only a small minority of the uses of this substance?

A You are referring to --

Q (Interrupting) The three uses specified in Paragraph 3(g)(2)?

A Yes, relatively small volume, yes, sir.

Q Thank you. I want to direct your attention to

Paragraph 3(g)(1) if I may borrow that for a moment. It says, "Anthranilic Acid is a precoursor to Methaqualone or Mecloqualone. That is Anthranilic Acid is combined with Acetic Acids --" and that is vinegar, isn't it?

A Vinegar is three percent, two or three percent of Acetic Acid.

Q "It is combines - Anthranilic Acid is combined with Acetic Acid or Acetic Anhydrate and which when combined with Ortho-Toludine, or Chloryl Chloride, which is spelled c-h-l-o-r-y-l c-h-l-o-r-i-d-e, and heat is applied, produces Methaqualone, period."

"Ortho-Chloroaniline and a reagent can be combined with Acetyl Anthranilic Acid, a similar process, to produce Methaqualone."

That is the paragraph that I want to ask you about, Doctor, and let me ask you whether, in your opinion, that paragraph is true or false (offering)? That is Paragraph 3(g)(1).

A Yes.

Q And is it true or false?

A Yes. Well, there are a number of false parts in here.

Q All right. In fact, would the reactions specified in Paragraph 3(g)(1) work?

A For the first part, which refers to Anthranilic Acid

combined with -- action to give Acetate, and Acetic antri -- product is in the -- I am sorry. When we combined with Ortho-Toluidine, and Chloryl Chloride, and heat is applied, produces Methaqualone?

Q Yes, is that true or false?

A That is absolutely false for the very simple reason that there is no such compound. To the best of my knowledge, and I have been in this field for a long time, there is no such product as Chloryl Chloride.

And for that reason, in the line up here it is unless one of the main ingredients to produce Methaqualone.

Q Is it a further basis for your opinion with regard to the truth or falsity of Paragraph 3(g)(1) that in fact, that in fact, Ortho-Chloroaniline cannot be used to make Methaqualone?

A It cannot be used to make Methaqualone. I think that it is important that those words be very carefully specified here. What this says here is that Ortho-Chloroaniline, and the reacting can be combined with -- and the Anthranilic Acid.

Q Is that a typographical error?

A I think it is an error.

Q Is there such a thing as Acetyl Anthracilic Acid?

A No, I think it is a typographical error. But the

real error on that is that a similar process to produce Methaqualone and Methaqualone does not use -- does not use Anthranilic Acid to produce that particular product.

Q Thank you. So it is then your testimony that Paragraph 3(g)(1), as well as Paragraph 3(g)(2) is completely false?

A Completely and inaccurately false.

Q I want to ask you a series of questions with regard to practices in the chemical profession, and in the development of new chemical products and processes. Particularly I want to ask you whether secrecy is a common practice among persons in the chemical profession, within lawful commerce, of course?

A Yes, it certainly is.

Q And why is that?

A Well, for the very simple reasons that usually you have invested a fair amount of time, and perhaps money in developing a particular product or process and the people try to pick those things up at no cost to themselves.

Q In other words, for competitive advantage within lawful commerce?

A Yes, and for protecting your own self from the point of view of obtaining a patent, after which you have

your protection.

Q All right. Is secrecy a common practice within the chemical professions so that it is virtually a standard operating procedure in some ways?

A Yes, it is.

Q And does that extend not only to keeping secrets from one's competitors, but to keeping secrets from one's own associates and employees?

A That happens in a reasonable number of cases.

Q For example, with regard to the kind of secrecy that would be a common practice within the chemical professions with the use of code names, or unidentified chemicals be common?

A Yes, I have seen that happen many times.

Q Would chemicals often be identified by numbers, or by names other than their own accurate names?

A Yes, sir.

Q Would the labels commonly be removed?

A Yes, well, removed and replaced with something else.

Q With some identifying label?

A Yes.

Q But with the label identifying the substance often removed?

A Yes.

Q And do you know of examples where in the course of lawful

commerce and in the competitive advantage, because of secrecy that you specified, goods are shipped first to one place, to a depot, and then picked up and trans-shipped so as to conceal from one's own employees, not only what the product is, but where it comes from?

A Yes, I can give you a first-hand example of that. I know of one case where my client did exactly this and carried on this type of operation in order to protect the things that we were developing during that time.

Q And is that especially in the case of developing ne products and new processes? Is the secrecy especially likely in developing new products and new processes?

A Yes, it is.

Q And is industrial espionage in fact a common practice in developing new chemical products?

A I beg your pardon?

Q Industrial espionage, stealing one competitor's secrets a common practice?

A Well, it happens many times, I will say that.

Q Well, is it sufficiently common so that it would be virtually standard operating procedure for anybody in this field to take counter measures against the possibility of that?

A Yes, they do.

Q I am sorry?

A Yes, they do; they take counter measures.

Q And when you serve as a consultant in the course of your work, it is your understanding that all of the matters disclosed to you are of a highly sensitivity and highly confidential?

A Well, certainly all or anything that is of a new nature, yes, very definitely.

MR. MICHAELS: May I have a moment, please?

THE COURT: Certainly.

DIRECT EXAMINATION (CONTINUING)

BY MR. MICHAELS:

Q I only have one or two further questions. I want to refer, first, to your opinion with regard to the truth of falsity of Paragraph 3(g)(2) with regard to the uses of the substance, and I want to direct your attention again to that particular paragraph stating that aside from one particular use the only other uses of the substance are "A" and "B" and I want to ask you, sir, whether in fact your opinion of that statement is c early false and is one on which, in your opinion, reasonable chemist might reach entirely different conclusions, or whether or not, in fact, this statement is clearly false?

A I would say it is clearly false.

Q And in your opinion, sir, could a qualified chemist make such a statement after a due and diligent investigation of the professional literature and the professional information available upon that point?

A I don't believe that he could. I don't think that he could.

MR. MICHAELS: Thank you, and I have no further questions.

CROSS EXAMINATION

BY MR. DREYER:

Q Mr. Soa?

A Yes, sir.

Q Mr. Soa, first of all, I want to reinvite your attention to Paragraph 3(g)(1) and (2).

A Yes, sir.

Q Of the Affidavit before you?

A Yes, sir.

Q Directing your attention, or inviting your attention to subparagraph 2 wherein it states that Anthranilic Acid is used in the manufacture of Analgesic drugs and certain veterinary products," and do you see that?

A Yes, I do.

Q Is that fact that Anthranilic Acid is used in the manufacture of Analgesic Drugs, is that a false statement?

A I believe that it is used to produce some Analgesic drugs.

Q So that statement is not false?

A No, I think that that statement -- the statement as made there, which is taken from context --

Q (Interrupting) Regarding the Analgesic drugs, is it fair to say that such an Analgesic drug in which Anthranilic Acid is an element or substance covers a wide variety of lawful products, lawful products or commercial products?

MR. MICHAELS: I believe that that calls for a legal conclusion by the Witness as to what substances may be restricted or available on prescription, or what may be unrestricted.

THE COURT: No, overruled. He is an expert and you produced him as one, and he has given conclusions, and he may give it.

THE WITNESS: May I have the question?

CROSS EXAMINATION (CONTINUING)

BY MR. DREYER:

Q I will repeat the question. Is it fair to say that the drugs in which Anthranilic Acid is, in fact found, covers a wide variety of commercial products, or products in drugstores which may be obtained by prescription or otherwise?

THE COURT: Tell me what you mean by Analgesic drugs.

BY MR. DREYER:

Q Could you define for the Court an Analgesic drug?

A One that has a tendency to relieve pain, basically.

THE COURT: All right.

BY MR. DREYER:

Q Now, referring to the question, do these Analgesic drugs, do we have a wide variety of such drugs?

A I am not sure just how wide that variety of the Analgesic drugs are.

Q Moving to the second statement within that paragraph: Is it fair to say in your experience that Anthranilic Acid is used in the manufacture of veterinary products?

A It is used in some veterinary products.

Q And could you tell the Court what specific products Anthranilic Acid would be found in use in the veterinary profession?

A Well, I think one, and I can give you an example of one right offhand and that is they are used in Cadmium Anthranilic, which is used on animals as a de-wormer.

Q As a de-wormer?

A Yes, sir.

Q And any other places on farms, let us say, or in

animal hospitals, or other places?

A Well, I think it has -- if it is formed into surfactants of course, it could be used for cleaning and things of that nature. You can go quite a long ways there.

Q And in your experience such products are widespread product[illegible] let's say, in an animal farm, and other places?

A I would say that you would find them, yes -- well, I don't know how widespread, to be very frank.

Q Paragraph 3(g)(2) then, is incorrect in your opinion, only in as far as it fails to delineate other products in which Anthranilic Acid is found, and would that be a fair statement? In other words, it is not incorrect as to the two items mentioned in Paragraph 3(g)(2)?

A No, the two items, they do use Anthranilic Acid in those two items. Now, what else was that, again? Was there anything else additional?

Q No, I think that you covered it.

Now, you listed several uses including dyes, food coloring, and I think that you said there were several other commercial uses in which Anthranilic Acid plays some part. Would these products that you have described, these commercial products normally be found again in your experience in commercial establishments which use those materials for manufacturing those particular products; in other words, dyes and food

colorings, et cetera?

Would you find people that manufacture these -- yes, you would find those particular dyes, you would find Anthranilic Acid.

Q And what are these particular dyes used for after they are manufactured? What are the dyes used for?

A They are sent out to people that finish fabrics, and converters in textile mills and textile plants for dying various kinds of fabrics.

Q And in your direct examination you stated that Anthranilic Acid does have some use for a chemist involved in research chemistry, is that right?

A Oh, yes.

Q And would a chemist involved in either research chemistry, or a chemist hobbist who may have a basement laboratory, use such Anthranilic Acids for the production of commercial products which I named, specifically dyes, food colorings, or some of the other commercial products which you mentioned? Do you understand the questions?

A I believe so. In other words, would he, if he had a laboratory in the basement?

Q Yes.

A And would he make certain dyes? He might. I think that he could easily make -- he could make indigo dyes.

Q Would you characterize the manufacture of such dyes as common among hobbyists chemists?

A Well, there is nothing very complicated about making certain of these dyes, sir.

Q Now, directing your attention to Paragraph 3(g)(1), which is before you: You indicated that the term Ancetyl-Anthranilic Acid, in your opinion, would be a typographical error, is that correct, in the first paragraph?

A Yes, next to the last line.

Q Now, directing your attention to Chloryl Chloride?

A Yes.

Q And in your direct examination you testified that you have never heard of that substance?

A That is correct.

Q Now, if I were to substitute the term Phosphorus Trichloride, instead of Chloryl Chloride, would that make any difference in your opinion?

A That would make a difference.

Q Would you tell the Court what difference it would make?

A The statement would be correct insofar as saying Acetyl-Anthranilic Acid, which we combined with the Ortho-Toluidine, and the Phosphorus Trichloride?

A Yes, Trichloride, and heat is applied, would produce Methaqualone, and that is -- I would say that taking

that word out of there, then it would be correct.

Q And in your opinion you stated that Acetyl-Anthacilic acid constitutes, in your opinion, a typographical error because you have never heard of that substance before, is that correct?

A Well, that -- mainly because you are referring here to Anthranilic Acid, and then you put Anthacilic, and to me it looks like somebody made a typographical error.

Q And you never heard of Chloryl Chloride befor either, is that correct?

A I never heard of Chloryl Chloride, correct.

Q Can you tell the Court what in your experience the term precursors means?

A Yes, precursor is a substance -- any substance which is used in a series of steps to produce a finished different product.

Q Is Anthranilic Acid a precursor, according to your definition of Methaqualone? Anthranilic Acid is a precursor of Methaqualone?

A Yes, it is.

Q Prior to your coming here tody did you research the methods of synthesis of chemical substances which will, when combined together, produce Methaqualone and did you research that particular issue?

A Other terms?

Q Yes.
A Other than the ones that are mentioned here?
Q Yes.
A Well, actually no. To make Methaqualone by a different procedure, as I understand your statement, is that correct?
Q Well, referring to the procedure outlined in Paragraph 3(g)(1), is it fair to say that there are other precursors listed in Paragraph 3(g)(1) which in your opinion are, in fact, precursors of Methaqualone and directing your attention to Ortho, as you pronounced it, Toluidine, or Toluidine?
A Yes, Toluidine.
Q Yes, is that a precursor of Methaqualone?
A Yes.
Q And referring to Paragraph 3(g)(1), specifically, the sentence in which is said Anthranilic Acid is combined with Acetic Acid or Acetic Anhydride, to produce Acetyle-Anthranilic Acid, and referring to that sentence?
A Yes, sir.
Q Could youthen characterize the substance Acetic Anhydride as a precursor to Methaqualone?
A Yes.
Q It has been considered that?

A Yes, it has been considered that type of thing on the edge of these things that have been considered.

Q Now, is the phrase -- is the substance Acetyl-Anthranilic Acid, which comes from Anthranilic Acid, or Acetic Anhydride used in the manufacture of dyes or food color or any of the other commercial products that you have named?

A Well, it has been used certainly in certain steps.

Q Now, when Anthranilic Acid is combined with another substance which has been described as a precursor, isn't it true that the range of possibilities is substantially reduced; that is the range of possibilities?

A It is reduced?

Q Itself.

A Yes.

Q And nevertheless considering those two elements, and the range of possibilities which can be produced from those substances, Methaqualone may still be produced from those substances?

A Well, the last sentence, it cannot be produced according to the last sentence. In other words, you don't produce Methaqualone, in the last sentence of (g)(1), or whatever it is.

Q Yes, concerning Chloryl Chloride?

A That is an absolutely incorrect statement because

you couldn't possibly produce Methaqualone regardless of how you look at this situation. It is a different type of product. If you made a product at all.

Q Let's start with the first part of that Paragraph 3(g)(1). You have agreed, isn't that true, that Anthranilic Acid is a precursor to Methaqualone?

A That is correct.

Q Have you agreed that Acetic Anhydride is a precursor to that?

A Yes, it is considered.

Q And the next step in that sentence is also considered that Ortho-Toluidine or Toluidine, is a precursor to Methaqualone?

A Yes.

Q Now, when one adds the substance or element of Ortho-Toluidine to the equation that you have described, is it not true that the possibility agains for the wide range of commercial products which you have described becomes narrow, narrowing the possibilities of products of these items?

A Well, you are really talking about a little different thing. But if you want to -- if you want to qualify that in a narrow way, some way or other, well, I would have to say yes.

Q Let me phrase it this way: Are there many other

substances which in your opinion can be produced from this combination, Anthranilic Acid, and Othro-Toluidine, or are there numerous other substances, other than Methaqualone which can be produced from a combination of those three elements?

A Well, I can think of some, yes.

Q Some?

A Yes.

Q Now, in your experience, then, based on what you have said, your major objection to Paragraph 3(g)(1) is the addition here of the term "Chloryl Chloride"; is that your main objection to that particular paragraph?

A Yes, it is incorrect. There is no such thing.

MR. DREYER: I have no further questions.

REDIRECT EXAMINATION

BY MR. MICHAELS:

Q With regard to the meaning of the term precursor, is the substance a precursor of only one other substance or many?

A Many.

Q And in other words, are you stating that because a substance is the precursor of whatever it is made into, is the definition of precursor to preliminary substance which is then made into some other substance?

A Yes, this is right in which you can visualize in that

part of preparing a finished product.

Q Anthranilic Acid is a precursor to detergents and oil anti-oxidents and dyes and flavors, and various other things?

A Yes, it is.

Q And it is a Toluidine,, a precursor of dozens of other substances?

A Many things.

Q Of legal things?

A Legal things, yes, sir.

Q And Acetic Anhydride is a precursor of dozens of, or even hundreds of other things?

A Probably even thousands.

Q In other words, isn't it true that the word precursor only means preliminary, and that whether a substance is a precursor of another substance depends on whether it was made into that other substance or intended so to be?

A That builds into the root to the finished substance, that is correct.

MR. MICHAELS: Thank you.

MR. DREYER: Nothing on recross, your Honor.

THE COURT: Is that all, gentlemen?

MR. KIETZMAN: I have no questions.

MR. SHANLEY: No questions.

MR. JONES: I have nothing.

MR. MICHAELS: Thank you, Doctor.

Mr. Yok Lee calls as an expert witness to the stand, William Timm.

W I L L I A J T I M M,

called as a witness, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MICHAELS:

Q Mr. Timm, because this is a matter of professional expertise, I will ask you first to state your credentials as an expert on the uses of Anthranilic Acid, and chemistry in general.

A I received my Bachelors of Chemical Engineering from New York University in 1952, and I received my Masters in Chemical Engineering from New York University in 1957.

I completed all of the course work for a PhD. at New York University. I am also a licensed professional engineer in the States of New York, New Jersey and Connecticut, and have application for the State of Virginia.

Q And your present work is a Consulting Chemical Engineer?

A I have been in private practice as a Consultant Chemical

Engineer for the past 15 years, and in that consulting work, I have dealt with several processes which use Anthranilic Acid, or as I like to call it, Ortho-Amino-Benzoic Acid, as it relates to a structure.

Q That is the proper chemical name?

A Yes.

Q And are you a member of the Association of Consulting Chemists of the American Chemical Society and the American Institute of Chemical Engineers?

A Yes, I am member of those, and also the New York State and National Society for Professional Engineers, and the American Industry Society, and the National Fire Protection Association.

MR. DREYER: We will stipulate as to this Witness' qualifications.

THE COURT: All right.

DIRECT EXAMINATION (CONTINUING)

BY MR. MICHAELS:

Q Mr. Timm, are you familiar with a book commonly called Kirk-Othmer?

A Yes, it is considered on of the "bibles" in the industry.

Q And is it considered current and authoritative?

A Yes, it has been printed since 1964, but most of the material in it is quite current, yes.

MR. MICHAELS: The particular reference we may note is to the expert selections in the exhibits as to the Defense motion.

DIRECT EXAMINATION (CONTINUING)

BY MR. MICHAELS:

Q Mr. Timm, is it true Ortho-Amino-Benzoic Acid, as you prefer to call it, is in fact what is called an intermediate chemical?

A Yes, it is.

Q What is that?

A A material used to make other substances. It is not normally like an initial raw material which you get, say, from nature or something like that. It is manufactured into its state, and then other manufacturers use the product to make various different products.

Q And does that mean that one of the basic building blocks of chemistry has a wide variety of uses.

A It is one of the basic building blocks of chemistry, especially the dye industry.

Q And is its versatility accounted for, at least in part, by the fact that it can be either acid in base and having opposite characteristic circumstances under different circumstances?

A Yes, that is what makes it so useful.

Q Mr. Timm, is Anthranilic Acid or Ortho-Amino-Benzoic

Acid, a precursor of the material Methaqualone?

A Well, the way I define a precursor, it would not be. I define a precursor as being one of the reagents which yield the final product, and under that definition, it is not.

Q In other words, it is a more remote one?

A More remote. To give you an example, if you go back and start saying what a precursor is, if you say anything which can be made into the product becomes a precursor, it becomes ludicrous, with a carbon, and a hydro-carbon, and oxygen as being a precursor to any one of the organic materials.

Q And does that mean that carbon hydrogen and carbon are precursors of virtually all substances on this plan?

A All of the organic chemicals.

Q Is Anthranilic Acid, in fact, a precursor of one substance, or of many?

A Many substances.

Q Can this substance be used in lawful commerce in the general economic use, to make a variety of substances?

A Very, very large variety of substances.

Q Would you say hundreds?

A Hundreds or more.

Q In research of chemistry or exploratory chemistry does

it have thousands of different applications?

A Yes, it can, because of its unique properties.

Q Whether the uses for which a chemist might order this substance, thus be limited to a narrow number, or would there be a wide variety?

A A research chemist could be using it for a whole series or family of products that he wants to try to make out of this material.

Q I want to direct your attention to Paragraph 3(g)(2) which states, and makes a specific statement as to what the only uses of this substance are, and I want to ask you whether, in your opinion, that statement is, in fact, true or false?

A This statement is definitely false.

Q And I ask you whether the basis for the opinion that you have just expressed?

A Well, because of the various other materials that the Anthranilic or Ortho-Amino- Benzoic Acid can be made, it just couldn't be true. The thing that I would say is that the man making the statement either had an ulteriour motive of making the statement --

MR. DREYER: I object. That is for the Court to decide.

THE COURT: All right.

DIRECT EXAMINATION (CONTINUING)

BY MR. MICHAELS:

Q In your opinion, could a chemist reasonably come to such a conclusion?

A A trained chemist could not.

Q Could a chemist find any professional literature in support of the conclusions of Paragraph 3(g)(2)?

A No, he could not. But he would only find it to the contrary.

Q Would the use of reasonable indulgence by a person even partially trained as a chemist lead him to such a conclusion?

A I think almost every textbook would give other uses other than these materials. But I think that the majority of uses in the textbook do not even list these materials.

Q Well, what are the primary uses of the substance, and by primary I mean by volume?

A The primary use is in the dye industry but it has got a very, very large percentage there.

Q And what would other substantial and significant uses be?

A Well, the other big use is the saccharide for a sweetener, and also to be used as ionic exchange resins, which has now become a very large growing field.

Q I don't want to ask you to define that ionic change process but it is a large use that is sufficient unless Mr. Dreyer wishes to inquire.

Also it is used in the paints and the Anti-Oxident and flavoring and detergents?

A Yes, it is.

Q And also used in oils and coolers and water softeners?

A Yes, as an Anti-Oxident.

Q And in polyester fabrics?

A Yes, it is.

Q Have you seen reference to its use in insecticide and fungicides and bird and insect repellants?

A Yes, there is some literature on that.

Q Referring to its use in fungicides, and also in a diverse variety of flavorings?

A Yes, it is used in flavorings and the essence is well known.

Q And would you say that the uses of this substance are expanding at this point in science, or are they narrowing themselves?

A I would say it is a continually expanding thing.

Q Now, with reference to the industrial and commercial uses of this substance, I want to ask you the question of what proportion of this produce of Anthranilic Acid is in fact consumed by the industrial and

commercial uses that you have specified, and saccharide, as well, but those uses outside of Paragraph 3(g)(2) and what portion of the uses of this substance are not named in that paragraphs that says the only uses are "A", "B", and "C"?

A Well, if you take it just as "A", "B" and "C", I say that you are probably about 98 percent, or more of the annual production is used for other industrial uses, other than what is stated in this Affidavit.

Q And in your opinion, sir, what proportion of this production of Anthranilic Acid is used in the production of controlled substances?

A I would say in the neighborhood of about two and a half percent.

Q In your opinion, sir, what proportion of this substance, Anthranilic Acid or Benzoic Acid is diverted into the illicit production of controlled substances?

A I would say a very minor percentage; less than one percent.

Q And would it be reasonably likely that any household that contained a red or blue fabric might, in fact, contain fabric died in the substance Anthranilic Acid?

A It is a very good possibility. It might even be in this room, the drapes.

Q Quite so.

Could Methaqualone, itself, in research chemistry be an immediate chemical, that is one that is about to be made into another chemical?

A Yes, a research chemist could be expanding that to some other usage.

Q I want to direct your attention to Paragraph 3(g)(1) and specifying the chemical reaction by which allegedly Anthranilic Acid is transformed into Mechloqualone. In your opinion, is that paragraph, as it is written, true or false?

A The way it is written, it is false.

Q And is there any such substance as out of the Chloryl Chloride?

A None, to my knowledge.

Q Did you look it up?

A I looked it up and I could not find any. But, in fact, I can add to that. Just by the name you can see it is wrong because Chloryl Chloride would refer to Chlorine, and Chloride also refers to Chlorine so it would be Chlorine Chlorine.

Q Let me ask you about the practices within the chemical and chemical research profession. First of all, are orders of a thousand or two thousand pounds of this particular subject, Anthranilic Acid, is that an

usually large order?

A No, it is not unusually large.

Q And what is the basis for your opinion?

A The basis is the manufacturers use one thousand pounds as a breaking point between a cost differential for above one thousand pounds the cost is $1.50 a pound, and below one thousand pounds the cost is $1.65.

Q And in your opinion is that, in fact, indicative of the fact that orders above that are by no means unusual?

A That is a normal indication that above one thousand pound orders are quite common in large consumers.

Q How extensive is the practice of secrecy in an effort to preserve secret information in the chemical industry, and chemical research?

A It is almost always used. But it is more or less a watch word in the industry that they try to protect their own technology and knowledge.

Q And does that watch word go to the point that you could state that most manufacturers in lawful commerce of this and other organic chemicals would maintain that same level of secrecy?

A Oh, definitely.

Q And would that go to the point of some specific various techniques to throw people off of what they

are manufacturing, or what is being done in their research?

Q And does that go to the extent of even keeping their own employees in the dark, not only as to what they are doing, but what substances they are using to do it, and what the processes are in treating that substance?

A It is. If it is a new product, that is quite common.

Q And would it be common to remove the label to identify chemicals only by company numbers, or to trans-ship so as to keep ones own employees from knowing the contents of a particularly secret chemical?

A That happens quite often in research labs, and in the large manufacturers.

Q And would the use of an unknown company, not associated with the actual ordering company, be a practice that occurs from time to time in the course of seeking secrecy?

A Well, sometimes orders are ordered under a company other than the original ordering company, just so that they can trans-ship and remove it and change the labeling, and not divulge who is buying the product from even the supplier, because that is also a source of tracing back to what they might be working on.

Q And would the use of a second warehouse or trans-shipment point be common, also?
A They do that quite often.
Q And when I ask you about whether these practices are common, I am referring to common and lawful commerce for competitive advantage, and is that the means of your responses?
A That is the use.
Q Mr. Timm, do very many chemists that do part-time research and product work on special processes at home?
A Well, they can be done at work or at home but it depends on his background and his company connections, and if he is professor in the university, and he may have the consulting client to do work for them and if they don't use the university lab, they use their own labs.
Q So many chemists would have labs in their home?
A Right.
Q Mr. Timm, I want to ask you a hypothetical question. Let's assume that you are the consultant to a chemical company and that the director of sales comes to you and tells you that he has received an order for 2,000 pounds of Ortho-Amino-Benzoic Acid, and that the ordering company's address could not be

readily checked and he consulted with you with regard to whether, in fact, this had any particular significance to you. What would you say the most reasonable inference to draw, based on your expertise on this fact would be?

A I would be assuming that the company is trying to cover up their order so that their competitors would not know what research they are doing, like sometimes you know a man is in a certain industry, and if they start to order a particular material, it narros down to the area of which they might be working, either producing a product, or making research in it.

Q Well, I suppose I could add certain facts and taking those as were given or told to you that in addition to the ones that I have specified, the director of sales were to tell you that the order was picked up in a rented van, and brought to the garage of the chemist's home, and that some of the windows of the home in northern New York were covered, and I wanted to ask you again; what would the, from your own information, the most reasonable inference to draw from the entire set of facts?

A Well, first, if it was in northern New York, and the windows are covered, I would probably be concerned on the type of covers, but would it just be to keep

the cold out, or it could be to keep the light out to prevent the decomposition of some light sensitive product, or it could be just to conceal the valuable equipment that he might have.

Q Still it is a question, but talking all of those facts together, what I want to know is whether all of those read together would mean to you, based upon your expertise on Anthranilic Acid, and the variety of uses and practices of the chemical profession, and would all of those facts together ring and inherit suspicion of criminal intent to you?

A No, I wouldn't think it would be criminal intent.

Q Would you believe, sir, that it would be unreasonable, and to believe that based on the facts that I have proposed as part of this hypothetical question, that there was, and I quote, "probably" criminal intent?

A I wouldn't think that there would be criminal intent.

Q Would you believe, or would you state that because -- excuse me, in fact, other inferences seem more reasonable than that?

A There are many other possibilities that can be going on.

Q Is Methaqualone a precursor for other substances or can it be?

A Yes, it can be.

Q Is Acetic Acid a precursor to another substance?
A Hundreds and hundreds.
Q Acetic Acid is what?
A Well, Acetic Acid, the best way to say, it is a small percentage in vinegar, and that is the wya most laymen would recognize it.
Q Is Ortho-Toluidine a precursor of one substance, or many?
A A number of them.
Q I won't ask you about Chloryl Chloride.

Is Ortho-Chloraniline a precursor of one substance or many?

A Many substances.
Q In fact, isn't it true that precursor just means something that goes before and in some particular order?
A Well, as I said, my definition of it is that it is a reactant to come up with another product that you are looking for. Now, all you have to do is change one of the reactants, and you have got a different product, and each one of them is a precursor to that one product. A precursor doesn't really mean too much.
Q Wouldn't it be true that any substance is a precursor of virtually a number of others, depending on what

one might intend to do with it or to make it into?

A A very large number of substances.

MR. MICHAELS: Thank you, and I have no further questions.

CROSS EXAMINATION

BY MR. DREYER:

Q Have you ever testified in a court of law before?

A Yes, I have.

Q Have you ever testified for a defense attorney before on behalf of a defense team in a criminal prosecution?

A Yes, defense attorneys, but I never had a team of attorneys.

Q And have you ever been paid in those prosecutions?

A Yes.

Q And are you being paid today?

A Yes, I am.

Q And is it your testimony that the only inference or logical inference that you can draw from the characterization of secrecy is deviousness, and that the only inference that you can draw is that the chemist in question or the person in question is trying to prevent disclosure of trade secrets; is that your statement?

A That is my experience. When people go to these means to try and cover what they are doing, I would say

almost all of the time if a man is basically an honest individual, and he is doing something honest, I feel that maybe I am wrong, but I look at people as people as saying that most of the people are honest. There are just a few crooks around.

Q Have you ever formed this opinion in a court of law before concerning this question of inferences which can be drawn from deviousness?

A No, this is the first time.

Q The first time?

A Yes.

Q Now, in your discussions, the devious means employed by persons or chemists to cover their tracks, you referred on many occasions to commercial establishments, is that correct?

A That is correct.

Q That means that people who are employed as chemists are usually associated with let's say, research laboratories?

A A man is either a consultant or he is hired by a company to do research, or he can be even starting his own company, like, for example, I have a client who started his own chemical company. Before he had an established manufacturing facility he ordered materials that was delivered to his house, and the

name of the company would probably be completely unknown to everybody at that time. Of course, once he gets into the manufacturing facility, everybody knew the company name.

Q To get to the story, the point is that he was working for a company, is that correct?

A He was working for his own company but he was the president of the company and he was the company.

Q In your experience, do chemist who are researchers in colleges and universities employ the same degree of secrecy or the same degree of what you refer to as deviousness, as research people do in companies, or large corporations; could you answer that yes or no?

A Well, I think I would have to --

MR. MICHAELS: Objection, your Honor, to the direction to answer it in a particular manner.

THE COURT: I will let him answer it.

Is there a difference between the university research man and the one out in the competitive world?

THE WITNESS: Well, the university research man quite often is working on pure research for the benefit of science. Perhaps all the information that he is given is normally going to be published in a paper, so he has no need to try to

cover up what he is doing.

THE COURT: That is what he is asking.

THE WITNESS: Now, who ever the man is --

THE COURT: Tell Mr. Dreyer.

THE WITNESS: Now, whoever the man is working for is a client, and it's a manufacturer, and he is commissioned to do this research for say the XYZ Chemical Company, then because of the inference that the company may want to cover up, and due to this devious method of time, to not reveal what he is working on, like, for example, the man may be doing research, and he has a college facility in which to do his research. But however if he wants to make sure that nobody at the university or his graduate students know what he is working on, he would then, instead of doing research at the university, do his research in his own laboratory, and this would eliminate the prying eyes of other associates.

CROSS EXAMINATION (CONTINUING)

BY MR. DREYER:

Q So, in your opinion, as I understand it, is that while there is a distination between researchers who do corporate work, and let's say, researchers who work for colleges or universities, that there is indeed a

lesser instance of persons who do work for colleges or universities who require devious means in performing their work?

A That is correct.

Q Now, let's assume, for a moment, that we do have an individual who works for a college or university and finds it necessary to supplement his income with outside work. In addition to the steps which you have outlined, which he may take to cover up his work, would he extend his secrets, and would he extend his project and extend the use of his laborator to a variety of other persons who are not engaged in chemistry work as a normal practice?

A Not normally. The only way that maybe he would use some local neighbors or so that might help him on something which these people would be untrained on and wouldn't know what the heck he was doing anyway. But it would be a pair of hands.

Q Would it be unusual?

A It would be unusual again, depending on the type of research that he is doing. If he has stuff that he has to move like large drums or lift large bags of materials, he might have somebody to do the muscle work for him. But he would definitely not try to have anybody who had any knowledge of chemistry in

there, because then they would more or less violate just what he is trying to do on the secrecy.

Q Referring again to the Affidavit, and do you have a copy of that now?

A No, I don't right now.

Q In your direct examination, and I invite your attention to Paragraph 3(g)(1).

A Yes.

Q In your direct examination you indicated that Anthranilic Acid is a precursor to Methaqualone but what you describe as a remote precursor.

A I said on my definition, that Acetyl-Anthranilic Acid would be the precursor, and Anthranilic Acid would not be a precursor.

Q Were you in Court when Mr. Soa testified?

A Yes.

Q And did you hear him state that Anthranilic Acid is a precursor?

A Yes.

Q And you disagree?

A My definition of a precursor is a little different than his.

Q Referring to Paragraph 3(g)(1) of the Affidavit, would you please identify the number of precursors which appear in that -- would you identify the number of

substances which are accurately described as being elements or substances in the manufacturer of Methaqualone?

A You mean reagents in the series of say one, in the material?

Q Yes.

A I like to use Ortho-Amino-Benzoic Acid as one of the materials, which is then used to manufacture the Acetyl-Anthranilic Acid and the Ortho-Toluidine and -- that is about it.

Q How about Acetic Anhydride?

A Well, Acetic Acid is one.

Q That is another precursor?

A Yes.

Q And how many precursors or substances -- strike that question.

Now, you referred, again, to the --

A (Interrupting) Go ahead.

Q You referred to Anthranilic Acid as being a remote precursor, and you also said that Anthranilic Acid is a substance which is involved in the making of many products, is that correct?

A Correct.

Q Now, could you identify the substance of Benzine as a common household product?

A It is a solvent, if somebody has painting done and so forth, and he might have Benzine around his house.

Q How about Acetone, and is that a common household substance?

A Yes, because that is used in the nail polish remover.

Q Now, in their pure form, or whatever form you know, or just their raw form?

A Most of the nail polish remover is Acetone.

Q I am not asking whether it appears in nail polish, but is it, let's say, a substance that you would normally find around the house in its pure forem?

A You know, as I said, nail polish remover is essentially Acetone. If you want 99 percent pure Acetone, I would say, no, it is not common, and is is just like you say if you want a 30 percent Acetic Acid in the house, and I would say, no, it is not common.

Q And is Anthranilic Acid, 2,200 pounds of Anthranilic Acid commonly found in the home?

A No, not in most homes.

Q 2,200 pounds of that found in a chemistry basement of a hobbyist chemist?

A No, if it was a hobbyist chemist.

Q What if any, other substances in your experiences, based on your knowledge, may be reproduced from the following combination of substances: Anthranilic Acid,

or whatever term that you prefe to call it, Acetic Anhydride, C -Toluidine, and Phosphoryl Trichloride; and please answer that question.

A Those are used to make Methaqualone, I believe.

Q How many other substances can be made from that, based on your experience?

A I don't know how many other substances other than Methaqualone, but I am sure that you can extend it further.

Q Can you supply any other names, other than Methaqualone which can be produced from those four items?

A No, not from those.

Q Now, in Paragraph 3(g)(1), the only substance that is really missing is that Phosphoryl Tricloride, is that correct?

A Well, you can use Phosphorous Oxic-Chloride, too.

Q And you heard Mr. Soa testify?

A Yes.

Q And you never heard of Chloryl Chloride before?

A Yes.

Q And you have never heard of Chloryl Chloride?

A No.

Q And you have made a lot of inferences concerning the fact that you believe that Chloryl Chloride is a typographical error.

A It is a possible error.

Q Now, you said that the percentage of Anthranilic Acid used in the manufacture or production of illicit drugs is about one or two percent; I believe you gave that answer?

A No, I said under one percent.

Q Where do you get that information?

A Well, I get that based on this figure: There is approximately two million pounds of Anthranilic Acid being manufactured now, but if you take one percent of that production, and that is 20,000 pounds a year. Now, the controlled substances was approximately double the Anthranilic Acid, and what that means is, there would be 40,000 pounds of an illicit drug being produced if one percent of the annual production of Anthranilic Acid was funneled into these illegal channels, and I think that volume is just way too high, but everybody in the country would have to be flying on this stuff.

Q Are you aware that Methaqualone recently became an illegal drug?

A I don't know when it became.

Q You don't know?

A I don't know.

Q Would it be a fair statement that the reason for illicit

manufacture would increase substantially after such a drug was made an illicit drug? Can you answer that question?

A I assume that it probably would if somebody was in the illegal drug business, because there would be no reason to produce it before it became an illegal drug.

Q Because it was sold --

A (Interrupting) Yes, commercially, and you could buy it just by ordering it the same as you can Anthranilic Acid.

Q And it became lucrative or necessary for someone to make Methaqualone after it was registered as an illicit drug, the chances are that the use for Anthranilic Acid for illicit purposes would also increase; is that not true?

A Well, not -- it would increase, but it is a matter of, you know, what percentage it would increase, because you got such a large annual production and maybe the increase is a fraction of, you know, a fraction of a percent and it would not be a one or two percent type increase.

Q How old is your information concerning the percentages concerning Anthranilic Acid?

A What do you mean?

Q When did you form your opinion that only one percent

is used in the manufacture of illicit drugs?

A Well, I recall my opinion after diligently searching for the annual manufacture of Anthranilic Acid because that --

Q (Interrupting) Who manufactures it lawfully.

A Yes, the lawful manufacture.

MR. DREYER: I have no further questons.

THE WITNESS: There is no illegal manufacture of that.

MR. DREYER: May I direct one other question to Mr. Timm.

CROSS EXAMINATION (CONTINUING)

BY MR. DREYER:

Q How long ago, prior to coming to Court, did you form your opinion as to the percentage of Anthranilic Acid used in the manufacture of Methaqualone?

A We worked it out by numbers, I think it was two or three days ago.

Q And these numbers were based on the lawful manufacture of Methaqualone?

A No, you are talking about the two percent and, yes, those were based on the lawful manufacture of not only Methaqualone, but this covered all of the barbiturate type materials, and it would something which would be a controlled product which would not normally be able

to be manufactured without a license.

MR. DREYER: I have no further questions.

THE COURT: Is that all?

MR. MICHAELS: I have no further questions on redirect, your Honor.

THE COURT: Do any of the other lawyers have any questions?

MR. HERRICK: Nothing.

MR. SHANLEY: No questions.

MR. JONES: No.

MR. KIETZMAN: No questions, your Honor.

THE COURT: You are excused.

(Whereupon the witnesses were excused.)

THE COURT: This are the two witnesses that you wanted to call this afternoon?

MR. MICHAELS: That is right. And as a closing statement with regard to that testimony, we would note only the fact that we believe that we have established secrecy is a common practice in the chemical profession, and it is not necessarily indicative of criminology, and that Paragraph 3(g)(2) specifically the only uses of a substance is, in fact, it falls in a manner which goes contrary to the heart of what the probabilities were concerning an order of

Anthranilic Acid.

With regard to further application, with regard to the Search Warrant, I believe it is getting late, and I owuld not wish to direct the course on how to proceed, but if the Court wishes to proceed at this time we are prepared, or if the Court wishes, the Attorneys will return for further proceedings tomorrow and we will be prepared to continue in that manner, as well.

THE COURT: No, I have had a long day and lots of business. We will start tomorrow morning at 9:30. I will try to be here at 9:30 and we can decide what to do, and I do not know whether you are going to call any witnesses or not.

MR. DREYER: I have not made up my mind.

THE COURT: You can let me know tomorrow.

MR. DREYER: Thank you.

MR. MICHAELS: Thank you, your Honor.

THE CLERK: Court stands adjourned until 9:30 tomorrow morning.

(Whereupon the proceedings were adjourned until 9:30 tomorrow morning.)

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED
SEP 1 1976
AT ___ O'CLOCK
J. R. SCULLY, Clerk
ALBANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

- against -

75-CR-166
76-CR-15

PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, YOK LEE and MARK MC DONALD,

Defendants.

CONTINUED PROCEEDINGS in the above-entitled matter came on before the United States District Court, Northern District of New York, Federal Building, Albany, New York, on April 6, 1976, before the HONORABLE JAMES T. FOLEY, United States District Judge, Presiding.

VOLUME II

- - -

U.S. COURT REPORTERS
FEDERAL BUILDING
ALBANY, N.Y.

A P P E A R A N C E S:

HONORABLE JAMES M. SULLIVAN, JR., United States Attorney, Northern District of New York, Federal Building, Syracuse, New York, Attorney for Plaintiff, By: WILLIAM F. DREYER, Assistant United States Attorney, Of Counsel;

- and -

E. STEWART JONES, ESQ., Jones Building, 28 Second Street, Troy, New York, 12181, Attorney for Defendant Lazarski, By: E. STEWART JONES, JR., ESQ., Of Counsel;

SHANLEY AND SHANLEY, ESQS., 35 First Street, Troy, New York, 12180, Attorneys for Defendant Newman, By: DONALD J. SHANLEY, ESQ., Of Counsel;

MC DERMOTT AND CHEESEMAN, ESQS., 90 State Street, Albany, New York, Attorneys for Defendant Winner, By: STEPHEN HERRICK, ESQ., Of Counsel;

DAVID S. MICHAELS, ESQ., 342 Madison Avenue, New York, New York 10017, Attorney for Defendant Lee;

ROSENBLUM and LEVENTHAL, ESQS., 732 Madison Avenue, Albany, New York, Attorneys for Defendant McDonald, By: PAUL KIETZMAN, ESQ., Of Counsel.

THE COURT: Gentlemen, before we start on the Search Warrant motions, the controverted matter, I think that we should find out whether you are satisfied with the information on your discovery motions that were given to you by the Government?

MR. KIETZMAN: Your Honor, I am basically satisfied with the discovery. I think I would like to note for the record that I was provided, for the first time yesterday, with information concerning photographic identification procedures of my client, and I would rather than burden the Court at this time with testimony concerning that issue, I would reserve my right to move as to that at some future date. I have no idea what the circumstances were. I know that the photograph identification of my client was made.

THE COURT: That is, at the time of trial.

MR. KIETZMAN: Other than that, I feel that the discovery was adequate. However, I was not satisfied with responses to my requests for a Bill of Particulars, and the distinction is that it is one thing to see information in the Government's file, which is very informative, and very useful. It is another thing to have a

Bill of Particulars which, in effect, limits the Government's proof to some extent, and enables me to prepare for trial.

Some of the things that the Government contends were provided in discovery in response to my motion for a Bill of Particulars I would still prefer to see in the form of a Bill of Particulars for that reason.

THE COURT: Mr. Jones?

MR. JONES: With the understanding, Judge, that Mr. Dreyer is going to furnish me with some additional information with respect to the chemical tests employed here, I am satisfied.

THE COURT: These things are always open for further evaluation, and if they get into some other evidence, then I am sure that the Government, at least should, and usually does, provide you with any additional information.

MR. JONES: With the knowledge that it is a continuing obligation, I am satisfied.

THE COURT: Mr. Shanley?

MR. SHANLEY: I have been going over the list, and I can say at this time that I am completely satisfied. Perhaps by the close of the evidence this morning we can take up with the

Court and/or Mr. Dreyer, the elements that I don't feel -- at least I don't have any recollections of having been furnished to me among the written documents, and I have gone partially through it and I only got this yesterday afternoon, and there are some things that I don't think have been furnished and I can inform the Court at a later time this morning.

THE COURT: I am ready to rule. I went over the papers again last night, and --

MR. HERRICK: (Interrupting) Your Honor, we are basically satisfied with the discovery procedures here, and the open file policy of the United States Attorney's office.

However, we too would like to state this with the understanding that Mr. Dreyer has agreed to give us further information on how the chemical tests were made.

THE COURT: There is always that continuing duty and if you find anything extenuating up to the trial, they have to turn it over to you. That is a good principle of law.

MR. MICHAELS: Your Honor, there are four particular items as to which we requested information which has not been provided to date, and

which seems significant to us.

They concern first, the original lab reports specifying what chemical tests were performed and the results thereof. Also statements alleged to have been made by Defendant Yok Lee on December 11th, fingerprints, and a description of the alleged Methaqualone and its packaging.

If Mr. Dreyer is able to assure us that information to the extent that he has it will be available or will be made available to the defense, we would state that we would be satisfied with that representation.

THE COURT: About those things that he just mentioned, Mr. Dreyer, what is your position? Usually the statements are furnished in some form.

MR. DREYER: We have already agreed to furnish the defense team with the reports of any other scientific investigations, and to include the testing.

THE COURT: Your original lab report?

MR. DREYER: Well, the original lab report is something I don't have in my possession, but the means used in testing the Methaqualone will be made available to the defense counsel. There probably will be four or five tests used and we

will provide to the defense, the names of the tests used?

THE COURT: And the other two items.

MR. DREYER: I can state on Yok Lee that there are not any. There are not.

MR. MICHAELS: I referred to the statement of December 11th which was referred to in this sworn affidavit in application. If, however, it is not specific as to what was said, and which particular individual among them made this statement --

MR. DREYER: (Interrupting) We will agree to work that out with Mr. Michaels. The Court should be aware, from the Government's papers, that there is a distinction between the motion for discovery as Mr. Kietzman pointed out, and the motion for a Bill of Particulars. We have a continuing obligation under the Federal Rules to provide discovery. However, regarding the defense motion for a Bill of Particulars, the Government has moved the Court to deny that request because in the Second Circuit the principle of law regarding a Bill of Particulars is not that a Bill of Particulars should be issued to limit the Government's proof, but rather to provide information

to the defense attorney so that he is not surprised at the trial. And I don't think that it is a proper argument in this court that the Government should have to limit its proof by issuing the defense a Bill of Particulars when we have opened up our entire file to the defense.

THE COURT: Did you all file your original motion papers with the court, all of the attorneys here?

MR. KIETZMAN: Yes.

THE CLERK: They are looking up the rest of them now.

THE COURT: I have motion papers of Mr. McDonald, and the motion papers of Mr. Shanley, and several motions. But I am going to state right now, in order to make a ruling: I am going to grant the motion for discovery to the extent furnished by the Government, and otherwise denied in each of the motions that are made.

As to the Bill of Particulars, unless there was, and I have read through the memorandum of law in the papers, any information that the Government refused to supply in request of certain particulars, I uphold that refusal. So I only grant the motion in respect to the Bill of

Particulars to the extent furnished.

That applies to all of the discovery motions, and all of the motions for a Bill of Particulars. Usually I endorse the motion papers, because you have motions with all kinds of numbers of subdivisions such as a, b, c and so forth. I will endorse them, but I think here we should have a blanket order following my ruling, Mr. Dreyer, and maybe separate orders. I don't know. That is something that you will have to decide.

MR. DREYER: Yes, Your Honor.

THE COURT: The main thing I am interested in right now is that before us is the motion to controvert the Search Warrant. I assume that you are going to call witnesses in regard to the Search Warrant?

MR. DREYER: Yes.

THE COURT: I see.

So, those are my rulings and the motions for discovery are granted, only to the extent furnished. Otherwise denied, and the same in regard to the Bill of Particulars, and I think that the other motions that I decided yesterday, and the motion for severance, of course, of Lazarski, was granted, and that takes away some of the other

problems.

Your order should cover all of those rulings.

MR. DREYER: Yes, sir. I think that we are ready to proceed with our first witness on the Search Warrant.

I call Mr. Paul DeZan.

MR. MICHAELS: Did the Court state that it does not have available the other motion papers?

THE COURT: I think that they are searching for them. Are you sure that your originals are filed with the Clerk?

MR. MICHAELS: I have a duplicate copy available should that be necessary.

THE COURT: No, it is just a matter of endorsing it, and I will make an order and also endorse it.

P A U L D e Z A N,

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DREYER:

Q Mr. DeZan, what is your occupation?

A I am a Supervisor Chemist.

Q Where are you employed?

A By the Northeast Regional Laboratory of the Drug

Enforcement Administration, located in New York, New York.

Q And how long have you been employed as a chemist, Mr. DeZan?

A I have been employed as a chemist for the Federal Government for about approximately 15 years.

Q And how long have you been a Supervisor Chemist?

A For approximately four years.

Q And I direct your attention to the week of December 11th, 1975, and do you recall that week, December 11th, 1975?

A Yes, I do.

Q And did you have occasion during the week of December 11th, 1975 to talk to an agent of the Drug Enforcement Administration by the name of Lon Sturrock?

A Yes, I did.

Q And did there come a time during your discussions with Mr. Sturrock that you discussed with him the substance known as anthranilic acid?

A Yes, I did.

Q And did there come a time during the discussion that you discussed a substance known as Methaqualone?

A Yes, I did.

Q And now, how many times did you speak to Mr. Sturrock during the week of December 11th, 1975?

A I am not sure of the number, but I know it was quite numerous.

Q And you spoke to Mr. Sturrock more than once?

A That is correct.

Q Mr. DeZan, I now show you an affidavit in support of a Search Warrant and direct your attention to Paragraph 3(g)(1) and (2),(offering), and would you please read 3(g)(1) and (2)?

MR. MICHAELS: Objection. We believe that the witness has not been properly qualified in order to give the statement required.

MR. DREYER: We are not qualifying Mr. DeZan to present an opinion in this court room. We are asking him to testify as to what occurred during the week of December 11th. Accordingly, it is not--

THE COURT: (Interrupting) You just asked him to read something and at least he can read it.

THE WITNESS: December 12th, 1975?

BY MR. DREYER:

Q Don't read it out loud.

Have you read it?

A Yes, I have.

Q Just keep it, will you. Now, directing your attention to Paragraph 3(g)(2) and is that an accurate statement, or an accurate representation of what you told Mr.

Sturrock?

A Well, it is probably a representation of what I told Mr. Sturrock.

Q Well, now, just for the orientation of the Court, what does 3(g)(2) state, "That, besides the manufacture of Methaqualone and Mecloqualone, the only other uses for anthranilic acid is in the manufacture of analgesic drugs and certain veterinary products."

Has Mr. Tripp in that affidavit misrepresented what you told Mr. Sturrock? Has he misrepresented what you told him?

A Not exactly misrepresented. If I might just elaborate just a bit. Apparently, in my discussions with Mr. Sturrock, I had stated that the only uses that I was aware of at that time was primarily the uses of anthranilic acid for the manufacture of Methaqualone and Mecloqualone, and probably certain other potential analgesic drugs and certain veterinary products.

Q Did you deliberately omit to tell him, Mr. Sturrock during the week of December 11th to 18th, of any other uses for anthranilic acid?

A No, I did not.

Q I now direct your attention to Paragraph 3(g)(1) of the affidavit, and would you again review that?

A I have.

Q Have you reviewed it?
A Yes, I have.
Q And I direct your attention to the phrase "chloryl chloride" in Paragraph (1).
A Yes.
Q And did you use the phrase chloryl chloride to Mr. Sturrock when you discussed with him the synthesis of chemicals for the manufacture of Methaqualone?
A No, I did not.
Q Up to the point in the affidavit, is what is written there an accurate representation of what you told Mr. Sturrock, up to that point?
A Yes, I would say it is.
Q Now, would you explain to the Court what you did tell Mr. Sturrock concerning the synthesis of Methaqualone or Mecloqualone, concerning the chemistry for the manufacture of the Methaqualone.
A Well, my discussion with Mr. Sturrock, I described to him various products that were involved in the synthesis of the Methaqualone.
Q In the context of Paragraph 3(c)(1) did you explain to Mr. Sturrock how Methaqualone is manufactured?
A Yes, in a simple nature.
Q Concerning the chemicals in there, what did you tell Mr. Sturrock?

A I told him that anthranilic acid is a pre-cursor to Methaqualone, or Mecloqualone, and that anthranilic acid is combined with acetic acid, or acetic anhydride to produce acetic anthranilic acid. This product is then combined with ortho-toluidine, in the presence -- well, before, substituting chloryl chloride here, and phosphorous trichloride, or phosphoryl trichloride.

THE COURT: Is that what you told him?

THE WITNESS: Either I told him that one reagent that is employed is either phosphorous trichloride, or phosphoryl trichloride.

BY MR.DREYER:

Q Have you ever heard of the phrase "chloryl chloride" in your experience as a chemist?

A No, I did not.

Q Is it fair to say that there is either a typographical error, or an error in the recitation over the phone to Mr. Sturrock?

A Yes, I would say it is.

Q Do you know any other errors in Paragraph 3(g)(1), and that is typographical errors, or other types of errors?

A Yes, I would say that acetyl-anthacilic acid is actually a typographical error, because, for the manufacture of -- excuse me, let me restate that.

Ortho-chloroaniline and phosphorous or phosphoryl chloride are employed with acetyl-anthranilic acid to produce Methaqualone.

Q And another error would be in the characterization of Methaqualone from the last synthesis described in 3(g)(1), and it should have been Mecloqualone?

A Yes.

MR. DREYER: I have no further questions.

MR. MICHAELS: May we have a moment, Your Honor?

MR. KIETZMAN: The defendants would move, at this time, would move to strike the entirety of Mr. DeZan's testimony relating to the reactions which he described, on the grounds that that witness has not been properly qualified to express such an opinion. We have heard nothing whatsoever of this witness' education background, and publishing background or other professional qualifications, other than the bare allegations of his employment.

MR. DREYER: We are bound by the four corners of the affidavit, and there is nothing there to indicate Mr. DeZan's qualifications, either.

THE COURT: I would like to hear them. You worked 15 years for the Government, and what is

your educational background?

THE WITNESS: Your Honor, I am a graduate of St. John's University, and I have obtained a Bachelor of Science Degree in Chemistry in 1960. I have been employed by the Federal Government as a chemist involved in the analysis of drugs, narcotics, for approximately, oh, a total number of years is 15 years. I have offered approximately six papers, all having to do with the analysis of drugs and drug abuse, published in the scientific papers, and accepted scientific journals. I have continued to remain current with various analyses, and such an example of that would be, I was sent to Georgetown University for approximately three months to become involved in analysis of organic compounds, using updated techniques.

Presently, I am now employed as a Supervisory Chemist, and that is what I have been for the past four years.

THE COURT: How many chemists are under you?

THE WITNESS: I have eight chemists under me, Your Honor.

THE COURT: And have you testified in court before?

THE WITNESS: Yes, I have testified in court in the Southern District, and the Eastern District of New York. Also in the courts of Boston, Massachusetts; San Francisco, California; and Denver, Colorado.

THE COURT: You were accepted then as qualified?

THE WITNESS: Yes, I was.

THE COURT: I accept you as a qualified witness.

MR. MICHAELS: The particular questions here do not, of course, involve the proper chemical tests necessary to determine whether a controlled substance is present. Rather, the expertise of the challenge relates to the lawful uses of a particular substance which is not a controlled substance, as to which we submit that particular persons being qualified to testify on another subject, is not determinative.

THE COURT: I deny the motion to strike. We are really concerned now with what was furnished within this supporting affidavit, and what the sources were. They can come from various sources, informants, and other kinds of things.

So I deny the motion to strike his testimony.

He is open now for cross-examination

CROSS-EXAMINATION

BY MR. MICHAELS:

Q During the week of December 11th, how many times did you speak with either Mr. Sturrock or Mr. Tripp?

A I testified before that I don't recall the number of times, but I know it was numerous times. I don't recall the exact number.

Q Did you make notes of your conversations?

A No, I did not.

Q Have you, in the course of your professional training, studied dye chemistry, or the chemistry anti-oxidents?

A No, I did not.

Q And are you familiar with acdidressin chemistry?

A No.

Q Chemical modifiers?

A No, I am not.

Q Are you familiar with the chemistry of artificial flavors and perfumes?

A No, I am not.

Q Are you familiar with the chemistry of detergents?

A No, I am not.

Q How do they make saccharin?

A I am not exactly sure.

Q Saccharin is a pharmaceutical substance of sort?

A It is an artificial sweetener.
Q And it may be made with anthranilic acid, can't it?
A I don't know that.
Q Are you familiar with the chemistry of paints and transformer coolants?
A No, I am not.
Q Are you familiar with the chemistry of water softeners?
A No, I am not.
Q Now, how about insecticides and bird and insect repellants?
A No, I am not.
Q In fact, isn't it true that you have no professional background or academic training in the lawful uses of substances?
A My profession is that I am a forensic chemist, and primarily involved in the analysis of drugs.
Q But you are an expert in the lawful uses of substances?
A The lawful uses of what?
Q Chemical substances?
A Of chemical substances. I cannot classify myself as an expert in the lawful use of chemical substances.
Q Well, as a forensic chemist, then let me ask you whether or not ortho-amino-benzoic acid is defined in the laws as you understand they are chemically applied, as a precursor?

A Yes. Ortho-amino-benzoic acid, and that can be employed.

Q I didn't ask you whether it can be employed. I asked you whether, to your knowledge, it is defined by law as a precursor?

A Defined by law?

Q Yes.

A No, to my knowledge, it is not.

Q You are stating that it can be employed, and not that it need be employed, isn't that true?

A That is correct. I would say also that it need be employed as far as I know.

Q But it has other lawful uses, isn't that true?

A Yes, I am sure it is.

Q And so you will acknowledge that a percentage of ortho-amino-benzoic acid need not have been making methaqualone?

THE COURT: Well, it is essential in Methaqualone to have that acid?

THE WITNESS: Yes, it is.

BY MR. MICHAELS:

Q But is it essential that if you have ortho-amino-benzoic acid that you must be making Methaqualone?

A If you only possessed ortho-amino-benzoic acid? No, it does not mean that you are only making Methaqualone.

Q Isn't it true that the manufacturing of that is a small minority of the use by volume of anthranilic acid?

A It was my opinion that it was the major use, taking into consideration that Methaqualone is commercially available by a number of pharmaceutical firms and I was considering that it was my opinion that its major use of anthranilic acid was for the manufacturing of this particular substance.

Q Did you look it up?

A Yes, I tried looking it up.

Q And what did you find when you looked it up, and where?

A I looked it up in our library, in the laboratory.

Q And was that in a reference manual?

A There are a number of books in the manual.

Q What did you look into?

A Well, first of all, I checked -- I can only remember some of the references. Remington Pharmaceutical was one.

Q What books did you look in of non-pharmaceutical chemistry?

A We have some of the non-pharmaceutical chemistry.

Q Did you look in the Chem Abstracts?

A We don't have Chem Abstracts all of the way up to 1975.

Q That is the authoritative and cumulative index or

chemicals con erning the technical aspect of chemistry, is it not?

A Correct.

Q And did you read it?

A The chemical abstracts?

Q Yes.

A No, I was looking up industrial uses of anthranilic acid.

Q And you didn't look there?

A No.

Q And that is the standard cumulative index?

A That is a cumulative index, but primarily I basically used it to conduct research, and on any organic substances.

Q Did you have a work called Kirk-Othmer?

A No, I did not.

Q You have never heard of it?

A Apparently not.

MR. MICHAELS: May I have a moment, please?

THE COURT: Mr. Dreyer, do you have another witness?

MR. DREYER: We have one or two witnesses standing by, depending on what we do here. We have a witness standing by on the execution of the Search Warrant, and the arrest of Yok Lee,

and nothing on the warrant other than the execution of the warrant. This will be the last witness on the question.

THE COURT: Do you expect to call them today?

MR. DREYER: We expected to, I believe.

THE COURT: And how long will that be? I have a jury waiting in another big case.

MR. DREYER: I understand that. I would estimate for Mr.Sturrock, ten minutes more on direct, and Mr. Elliot to take five to ten minutes on direct. Cross-examination could be lengthy, however.

BY MR. MICHAELS:

Q Which reference books did you check, specifically?

A As I can recall right now, the reference books that I used only was Remington.

Q Which is a pharmaceutical book, is it not?

A Yes, and the Merk Index.

Q And that is a pharmaceutical book, is it not?

A It is a book which generally describes numerous organic compounds.

Q What did you find in the Merk Index, concerning the statement of 3(g)(2), in the Merk Index?

A What?

Q The statement that is in the statement 3(g)(2), did you

find it in the Merk Index?

A No.

Q You didn't?

A The statement in 3(g)(2) in the Mark Index?

Q Yes.

A No, I did not.

Q Did you find any other portions of it in that Index?

A No.

Q What did you find in the Merk Index?

A Primarily it was listed as a compounder and the formula that was employed was used for the treatment of a disease in swine. Anthranilic acid was known to be or referred to as possibly vitamin L. However, I do know from my knowledge that vitamin L is not promoted as a vitamin for human nutrition so, therefore, I did not consider it useful. And that was the only thing I found under Merk Index.

Q What other reference manuals did you check?

A A dictionary of compounds, and I believe it is a 12-volume piece of work.

Q Did that state the uses which you stated?

A For certain -- no, it did not. Are you talking about the statement of the uses that I stated in the affidavit?

Q Yes.

A No, it did not.
Q Where did you get your information about what the only uses of this substance was for?
A I didn't say it was the only use. I said the only uses that I am aware of.
Q Excuse me, did you state that besides this manufacture of Methaqualone and Mecloqualone, that the only other uses for anthranilic acid was in the manufacture of analgesic drugs and veterinary products?
A That is, that is actually a representation of what Mr. Sturrock thought I related to him, and it was put on that paper that way. But actually it was also stated that these were the uses that I was only aware of at this time.
Q In other words, you didn't state that those are the only uses?
A Probably the only uses that I am aware of.
Q But did you state, as a fact, that those three uses, the pharmaceutical use "A" and pharmaceutical use "B", and pharmaceutical use "C" are the only uses of the substance?
A No, I didn't say that. It was primarily only those three. I said that those three are the three that I am aware of.
Q And did you ever go back to the library and look in the -

A (Interrupting) Yes, I continued to pursue it.
Q And where did you pursue it? What else did you check?
A I checked other volumes that we had in our library.
Q And did you check any volumes in any library, aside from your own?
A Well, primarily, I wasn't actually -- I didn't know exactly where to look, trying to find industrial uses for a particular chemical isn't an easy process.
Q Did you ever hear of a company called Sherwin-Williams?
A No, I did not.
Q You never heard of them?
A Sherwin-Williams? The only one I know is the one that makes paint.
Q It is a chemical company called Sherwin-Williams and it is a company in Ohio, a prominent maker of ortho-benzoic acid.
A No, I never heard of it.
Q Did you ask any other chemists?
A Yes, I did.
Q And did you ask any other non-forensic chemist, outside of the police lab?
A No, I didn't.
Q Did you ask any chemists trained in industrial and lawful applications what the lawful uses might be?
A My ties are primarily with law enforcement laboratories

and I just didn't have any -- I did not know of actually any particular individual to go to, and I primarily just restricted myself to the people and the contacts that I am aware of.

Q In fact, you didn't ask any industrial chemicsts, chemical engineer, or theoretical chemists, aside from those associates that you might have in the police lab?

A Well, no, I did not, but that is not our usual procedure, and that is why I did not pursue it that way.

Q Did you check any industrial chemical manual?

A No, I did not.

Q Did you look into the question of what non-pharmaceutical uses this substance might have?

A Only with respect to the reference that I had in my library.

Q Which were all pharmaceuticals?

A No, they weren't all pharmaceutical. We have a number of books which are -- which I would not consider all pharmaceutical.

Q Do you have any books on dye chemistry for the chemistry of anti-oxident?

A No, apparently we do not have anything on the anti-oxidents or dye chemistry. It is not our field of work so therefore I would not expect to find those

books in our library.

Q You did not go to the chemical library, or any other library except your own?

A That is correct.

Q And you did not ask anyone, outside of your field, did you?

A Outside of my field, no.

Q Did you try the Society of Consulting Chemists?

A No, I did not.

Q Did you try the DuPont Company?

A No, I did not.

Q Did you look up to see who makes the substance?

A Yes, I did.

Q And who makes it?

A I could not find who manufactured anthranilic acid.

Q Did you try?

A Yes, I tried looking up to find out who manufactured it.

Q And where did you look?

A There are a few buyers' guides that we have in our laboratory which lists a number of compounds, numerous compounds, and their sources. Apparently I wasn't able to locate it there.

Q Did you try the Syntylic Organic Chemical Association?

A No, I did not.

Q Did you try B.A.S.F., which is Wyndott, New Jersey?
A No, I did not.
Q Did you try the Conso Lab Supply Company?
A No, I did not. I am not aware of these chemicals.
Q Did you try the Anachemia Chemical Company?
A No, I did not.
Q Did you try the S.G.A. Scientific Supply Company?
A Scientific what?
Q Supply company.
Q Which one?
Q The S.G.A.?
A No, I did not.
Q Did you try any company?
A No, I did not. I am not familiar. I was trying to locate the source of manufacturer, and I did not locate that manufacturer, and so therefore there wasn't a company that I was able to call.
Q Did you look up the production figures for this substance to see how much was made?
A No, I did not.
Q I'm sorry?
A No, I did not.
Q Did you look in the figures of the United States Department of Commerce?
A No, I did not.

Q And you are familiar with the fact that the Department of Commerce keeps production figures on chemicals?
A Well, to a certain extent I assume that you are correct, but I never employed their facilities on the production figures of any compound before.
Q Did you try any standard organic chemistry text?
A Yes, I did.
Q Which?
A The standard organic text that I employed was a book by Jenkins and Harton, and Roberts Organic Chemistry.
Q And what did you find out from those two books?
A I couldn't locate the compound, except the structural formula.
Q Where did you find out that the substance has veterinary uses?
A In the Merk Index, and they say --
Q (Interrupting) Did you find out the substance used in making analgesic drugs?
A Initially I know that there was an article in the Scientific Journal which a number of potential analgesics were being synthesized and Methaqualone was one of them, and there was a number of other compounds which were being considered as potential alalgesics and therefore I concluded that it might have been used for the manufacture of potential analgesics.

Q All right. Did you obtain the opinion of any consulting chemists, or any professors of chemistry?

A No, I did not. I normally, we did not consider that it would warrant it to such an extent that we would order to bring in consulting chemists, and we did not pursue it at that time.

Q And you did not feel it was worthwhile to look further, is that right?

A I took it upon myself to find out as much as you possibly could, and there is where I stopped.

Q But as much as you possibly could did not include asking any experts outside of the laboratory, and did not include looking in the chemical abstracts, isn't that true?

A That is correct. The Chem Abstracts in our laboratory are limited in respect that it only goes up to 1954, I think. We normally don't utilize those particular journals in our library.

Q Did you go to another library?

A Yes, I did, but apparently I didn't employ the Chem Abstracts.

Q Mr. DeZan, I want to show you an excerpt from the Chem extracts, and I ask you to look it over (offering).

MR. MICHAELS: I ask that the particular document in the hands of the witness be marked

for identification as Defendant's Exhibit 1.

BY MR. MICHAELS:

Q Do you see there many listed uses for anthranilic acid, or possible chemical combinations of it?

A I see possible chemical combinations, but that doesn't mean that it is an industrial use.

Q I didn't ask the industrial uses, but what it might be used for, and do you see many uses listed there?

A Apparently when I was approached by Mr. Sturrock, we were considering commercial uses of anthranilic acid, which meant wide uses. This is primarily a listing of all other items of use, which may not be widely used, but may be the result of a research project.

Q But they are other uses of the substance?

A Oh, yes.

Q And then might research chemists be doing any one of those reactions, is that not true?

A Yes.

Q And how many of them are there?

A There are numerous.

Q Hundreds?

A I would say that.

Q But you never checked into this, did you?

A No, because we were considering wide commercial uses of anthranilic acid.

Q I want to read you the paragraph in question here which says besides the manufacture of Methaqualone, and Mecloqualone, the only other uses are in the manufacture of analgesic drugs and veterinary products, and does that say anything about industrial uses?

A Commercial uses.

Q No, sir. I want to show it to you and again, and you tell me whether you find the words limited to commercial uses right there.

A Well, it doesn't say limited to commercial use.

Q It says the only other uses.

A That was a representation of Mr. Sturrock. I told you what I said. I had verbally told him over the phone that apparently what I am aware of at that time was that anthranilic acid was employed in the manufacture of Methaqualone and Mecloqualone, and probably used for the manufacture of potential analgesic and veterinary products.

Q Did you tell him that those were the only uses?

A I told him that those were the only ones that I was aware of at that time.

Q Were you accurately quoted in Paragraph 3(g)(2)?

A Accurately quoted? No, I was not.

Q And are you saying now that the area in which you were not accurately quoted in the statement in Paragraph

3(g)(2) were those, in fact, were the only uses?

A Would you repeat the question, again?

Q Are you saying that the way in which you were misquoted is that you said that those are the ones that I know at this time, while the paragraph said that those are the only ones, and is that the way in which you were misquoted, and if not, please tell us?

A Yes, I would say that it was a misquotation in that those were the only uses. I cannot say that those are the only uses if I am not aware of the other uses.

Q Is Paragraph 3(g)(2) in your opinion accurate as it is stated?

A Accurate as it is stated? No, I cannot say that it is accurate -- accurate with respect to what?

Q With respect to what it says.

A The only other uses for anthranilic acid?

Q Right.

A No, I would say that that statement is not correct.

THE COURT: But is it accurate as to what you told the agent?

THE WITNESS: It is a representation --

THE COURT: (Interrupting) In this regard?

THE WITNESS: Of what I told Mr. Sturrock.

THE COURT: I thought that you said that you didn't tell him that the only other uses --

THE WITNESS: (Interrupting) I did not say that the only other use. I said that this was the only use that I was aware of.

THE COURT: That you knew of?

THE WITNESS: That is correct.

THE COURT: You should mark that, Mr. Michaels, as Exhibit 1, is it? Has the Clerk marked it?

BY MR. MICHAELS:

Q I want to show you another document, Mr. DeZan --

THE COURT: (Interrupting) We usually mark them here in the court and then have the clerk mark it.

BY MR. MICHAELS:

Q I want to show you another document, this being a publication of Sherwin-Williams Chemicals, a Division of the Sherwin-Williams Company of Cleveland, Ohio, with an office in New York City and describing analgesic acid, its reactions and its uses.

THE CLERK: Exhibit A, is the Chem Abstract, and that is Exhibit A as marked.

(Document marked Defendant's Exhibit A, for identification.)

THE CLERK: Also Defendant's Exhibit B has been marked for identification.

(Document marked Defendant's Exhibit B, for identification.)

BY MR. MICHAELS:

Q I want to show you Exhibit B and ask you to look it over (offering).

I want to direct your attention particularly to the column on the left where the uses of the substance in lawful commerce and industry are described?

A Yes.

Q Did you see that document or talk with any representative of that firm prior to expressing the opinion which was quoted to whatever degree of accuracy in Paragraph 3(g)(2)?

A I did not realize that Sherwin-Williams manufactured it, so therefore, I couldn't speak to any representative of that firm.

Q In other words, no?

A No, I did not.

Q And now having now read it would it be your opinion that Paragraph 3(g)(2) is accurate or inaccurate?

A In considering that just from the basis of that article here alone, I would say that the statement in 3(g)(2) that the only other uses, that statement would be incorrect.

Q Thank you, and with regard to 3(g)(1), I'm sorry,

but I did not understand your testimony on direct. When you informed Officer Sturrock of what Paragraph 3(g)(1) says, did he misunderstand you, or did you get the equation a little wrong?

A In respect to the typographical errors? I related the information in there with respect to the use of the anthranilic acid and the manufacture of Methaqualone.

Q Did you tell him that you could make Methaqualone out of ortho-chloroanyline?

A No, I did not tell him that.

Q But it says that there, does it?

A Yes, apparently I would consider it a typographical error.

Q And you did not tell him any chloryl chloride, did you?

A No, I did not tell him anything with respect to the chloryl chloride.

Q And you consider that an error, too?

A Yes, sir.

Q And you didn't tell him anything about any anthacilic acid?

A Anthacilic acid? No, apparently maybe that is what it sounded like when I spoke to him over the phone.

Q But you would find three errors in that three sentence statement, would you not?

A Yes, sir.

Q In fact, the reactions wouldn't work, would it, as it is stated there?

A That is correct, with respect to Methaqualone, or the Mecloqualone, yes, sir.

Q Thank you. I want to direct your attention to this blackboard where we have listed the names of the six chemicals that we have mentioned here. I want to ask you, would you use the maximum number six, and we have acetic anhydride, and then, the ortho-amino-benzoic acid, and what do you get when you mix them and cause them to react by catalysis or whatever you use? What would be produced either by heat or whatever?

A Ortho-amino-benzoic acid and acetic anhydride?

Q That is number one through six?

A You would produce, under the heat, a reaction, you would produce what is referred to as anthranilic acid.

Q Is that a controlled substance?

A No, it is not.

Q What would happen if you mixed number six with number three, and that would be acetic anhydride and ortho-toluidine, and what would you get there?

A Ortho-toluidine is number three? I can't se e the board.

Q I will move it closer.

A Yes, please. Well, I would assume that a reaction would occur and therefore you would get probably acetic ortho-toluidine.

Q Would that be acetic ortho-toluidine and is that a controlled substance?

A No, it is not.

Q What would happen if you added phosphorous trichloride to the acetic ortho-toluidine, and what would you get then?

A I don't know.

Q Would you get a controlled substance?

A I doubt it very much.

Q So we now have three reactions that you could do with those particular chemicals, the ortho-amino-benzoic acid, and the ortho-toluidine, and the acetic anhydride, and these three different reactions, and none of which yield a controlled substance, is that correct?

A You mentioned the three substances, and did you say in any combination whatsoever would not yield a controlled substance?

Q Do you get a controlled substance out of any one of the three reactions that I have just asked you about?

A No, you do not.

Q But in those reactions, now, ortho-benzoic acid,

number two, and it is a precursor, and it is precursor to a non-controlled substance it is produced, is it not?

A That a precursor to that -- well, you can consider a necessary agent or a precursor for that product?

Q You can say anything is *a* precursor, depending upon what it is made into, couldn't you?

A Well, let's take another one. Number two, and number four, and number one, you put it in, and number four is acetic anhydride and that is number four plus number one, and what would that produce, sir?

A By itself, it may produce anaceial.

Q And is that a precursor of anthranilic acid?

A Not that I am aware of.

Q Would it produce a controlled substance?

A No, I doubt it very much.

Q Let's say you took number five, and we haven't gone into that yet. But that is ortho-chloroaniline, and let's say that you added something like sodium hydride that was diluted, and what would you get?

A Did you say ortho-chloroaniline?

Q Yes.

A I don't know.

Q Could you possibly get a combination of say anthranilic acid?

A No, how can you get a combination of anthranilic acid

by adding that to the ortho-chloroaniline?

Q I am asking you, sir? Would you get a controlled substance?

A No, you would not.

Q When you mix sodium into ortho-amino-benzoic acid, would you produce a controlled substance?

A Sodium?

Q Yes.

A I don't know, sir.

Q Well, how would you mix ortho-amino-benzoic acid with ether -- well, would it produce a controlled substance?

A You wouldn't produce a controlled substance mixture with ortho-amino-benzoic acid with ether.

Q Would it be a fair summary of your testimony that from a majority of what you could combine these six substances among either one, that they would not produce a controlled substance in a majority of ways?

A That the majority would not.

Q A majority of ways of combining of these six substances, even if you just limited it to those six, the majority of ways of combining them you would not get a controlled substance,or would you?

A There are a majority of ways in which you can produce perhaps numerous products by combining two different

chemicals.

Q You could produce numerous products by combining two different chemicals?

A By combining those various different combinations.

Q How would these numerous reactions produce a controlled substance?

A There are chemicals up there that would produce a controlled substance.

Q I didn't ask you that. I asked you how many?

A How many chemicals up there?

Q How many different ways of combining these substances would produce a controlled substance, as against how many ways of combining them that would not produce a controlled substance?

A The number of ways which you would produce a non-controlled substance is predominant.

MR. MICHAELS: Thank you. I have no further questions.

THE COURT: Are any other lawyers going to examine here?

MR. KIETZMAN: Do you feel that only one out of six of the lawyers have a right to cross-examine this witness?

THE COURT: I am not making that point, but I thought that you were giving the control to Mr.

Michaels and now are you going to change the system now?

MR. NICHAELS: That was only because I had previously had more opportunity to speak with the defense experts and was more familiar with that particular aspect.

On this aspect or any other challenge to the Search Warrant, I can speak only for my client, but they may adopt to whatever extent they wish to adopt my questions.

THE COURT: I am trying to find out about my time. How many other lawyers intend to examine this witness?

MR. SHANLEY: I do.

MR. JONES: We cannot tell until Mr. Kietzman sits down, Judge.

MR. SHANLEY: I have a few questions.

MR. KIETZMAN: I only have a few questions, and I will try not to go over the same ground.

THE COURT: The reason is, and I am glad that our distinguished lady newspaper reporter is here, because it points up the need for a third judge in this United States District Court for the Northern District of New York better than any example that I could find. This is it. These

are the facts of life here. There is a jury outside waiting to proceed in a case, and we have tried it three or four days last week, and they are suing for millions of dollars, and there are counterclaims, and the lawyers come from Washington and Chicago, and witnesses from Texas and all over the country. It shows that it is pretty difficult, no matter how well you plan, to fit this all in. There is no other judge available to do what I am doing here in this area, and also to process the jury trials.

I think that I will excuse the jury and the people in the other case. I will let them go until two o'clock this afternoon so they won't be sitting in the jury room.

Mr. Kietzman, you may proceed.

CROSS-EXAMINATION

BY MR. KIETZMAN:

Q Mr. DeZan, you stated that you have a Bachelor's Degree in Chemistry?

A That is correct.

Q Do you have any graduate degrees in that field?

A No, I do not.

Q For the past 15 years you have worked with the Federal Government, is that right?

A Correct.

Q In the law enforcement area?

A Correct.

Q Have you had any prior experience in other areas of expertise?

A In the field of expertise, yes, I developed an expertise in the field called Optical Rotothory Dispersion.

Q And does that have anything to do with what we have talked about here today?

A No, it does not.

Q With respect to chemistry, organic chemistry, are any of the subjects on which you have testified today had you had any prior positions prior to your 15 years of employment with the Federal Government?

A With respect to chemistry, no.

Q Did you ever work with Special Agent Lon Sturrock before this?

A We occasionally call just for general information. I relay general information to him on single occasions.

Q By telephone?

A By telephone.

Q Do you type?

A Do I type?

Q Yes.

A Yes, to a certain degree.

MR. DREYER: We will concede that the chemist did not prepare the affidavit in this case. That is all cumulative. There is no affidavit by Mr. DeZan, and we are bound by what is said in the affidavit. It could have been an expert affidavit --

THE COURT: (Interrupting) But this affidavit is by Agent Tripp, isn't it?

MR. DREYER: Yes, that is the affidavit that we are dealing with.

BY MR. KIETZMAN:

Q Did you ever type the word "phosphorous," for "phosphoryl," when you meant to type "phosphorous"?

A No.

Q Does that seem likely to be a typograhical error in this?

A Typographic or the way it sounded over the telephone?

Q Typographic error and that is the word that was used on direct examination, I believe.

A Well, sir, I can only say that the word on the affidavit was not the word that I employed. Not whether it was typographical or possibly a misrepresentation of what was said over the telephone.

Q Well, what is the extent of your legal training, if

any?

A Well, I have only testified in court cases with respect to providing testimony as it related to my analysis.

Q Do you have any on-going educational courses that keep you current with federal controlled substances?

A No, I am not aware of any courses that are available to keep you current with respect to federal control law.

Q And are you aware that the word precursor has statutory means with respect to controlled substances?

A Yes.

Q And does it all have a precise chemical meaning?

A Yes.

Q And are those meanings identical in your opinion?

A Yes, I would think so, yes.

Q Did you have the occasion to review any written matter of any sort prior to giving your testimony here today?

A Review any written matter?

Q Yes.

A Well, with respect to what?

Q Anything at all?

A Well, I have -- like we have a reference file in our library with respect to Methaqualone and Mecloqualone, and I did review the file.

Q And was that all?
A That was all.
Q Did you ever make Special Agent Lon Sturrock aware of the nature and extent of your experience as a chemist?
A I don't think I did.
Q So he knew you only as a Supervisory Chemist of the Northeastern Region of the D.E.A.?
A Yes, I am sure he was aware of that, yes.
Q Mr. Dezan, if you were told by a person who has advanced degrees in chemistry, and testified to a wide experience in the production and use of anthranilic acid in the commerce and research field, if you were told by such a person that 98 percent of all anthranilic acid manufactured each year were used for other than pharmaceutical uses, would you feel qualified to disagree with that statement?
A Well, I don't know if I would disagree with it.
Q Would you feel qualified to disagree, based on your own experience, and I am just asking if you would feel qualified?
A I would only disagree if I knew I had information to the contrary.
Q And I take it that that means no?
A Well, I would -- that does not. I wouldn't say that that means no, but it does mean that I wouldn't just

assume that he is correct. I would actually demand actually some documentation, or some sort of references which he may have employed in getting his figures.

Q I just want to go back and ask you this one more time, and please listen to my question. As you sit there right now, knowing what you know, and with the expertise that you have, would you feel qualified, as you sit there right now, to disagree with such a statement?

A I wouldn't disagree with such a statement, but I would certainly also take -- I would say also that I wouldn't totally accept it.

Q Understand, I am not trying to insult your credentials or ability or to make you look stupid, but based on your realm of experience would you, as you sit there now, feel qualified to disagree with such a statement?

A No, I wouldn't disagree with that statement.

Q Now, you have stated that the matter set forth in Paragraph 3(g)(2) was at the very least an incorrect version of what you told Agent Sturrock over the telephone, is that correct?

A It was only a representation of what I said, but it wasn't completely accurate, an accurate statement of what I said.

Q And certainly an incorrect one?

A That is correct.

Q Now, in view of these limitations on your experience that you have just established, can we agree that the omission of the phrases that you used in referring to commercial and industrial use, and these being the only uses that you knew of, were very significant omissions?

ANo, I wouldn't say that they were significant omissions. Significant with respect to what?

Q All right, let me ask you the question in a different way: If, you, yourself, were expressing this opinion on the uses of anthranilic acid, to a non-chemist, and let's say to a lawyer under oath, wouldn't you feel compelled to disclose the range of your experience before you expressed that opinion, or would you feel comfortable in saying that these were the only uses?

A I wouldn't feel comfortable in saying that these were the only uses until I was definitely certain that those were the only uses.

Q All right. Would you feel comfortable,and would you feel as though you were being candid and accurate testifying under oath to a non-lawyer that the only uses of anthranilic acid referred to, and make no reference to the fact that you were talking about industrial and commercial uses?

A Would you repeat that,please?
Q Now, the whole question is: If you were expressing this opinion under oath to a non-chemist?
A Yes.
Q To a lawyer, would you feel comfortable with the statement,the bare statement that the only uses, other than the manufacture of Methaqualine, Meclo-qualone, were certain veterinary products and analgesic drugs, expressing the qualifier that you know that these were the only industrial and com-mercial uses,and that these were the only uses that you knew of? Wouldn't you feel compelled to make those disclosures if you were testifying under oath?
A I would question whether, actually, I would relate to that saying that these are the only uses that I am aware of with respect to anthranilic acid.
Q So the answer is yes?
A If I actually had the figures with me as it was. brought out during my testimony, that if I had the figures that may be available in interstate commerce from the Commission there, if I had definite facts to show that there were other uses for it, I would claim that there were other uses for it.
Q But you didn't have that information back at that

time?

A I did not have that information nor did I know where to get that information.

Q So if you had been testifying under oath before a Federal Magistrate wouldn't you feel compelled to add the words that these are the only uses that I know of?

A That is what I stated before, that those were the only uses that I know of. Apparently, what is in the affidavit is only a partial representation of what I actually and accurately said.

Q So I take it then that the answer to my question is yes, an affirmative.

THE COURT: Well, maybe he doesn't remember your last question. But I think he told us what he means. He said if he were there and he wrote the affidavit that he would say that the only uses that he knows of, and that is an important qualification.

MR. KIETZMAN: That is how I understand his testimony, and I have no further questions.

THE COURT: Mr. Jones.

BY MR. JONES:

Q You reviewed the affidavit of Special Agent Tripp before testifying here, didn't you?

A Yes, I did.

Q Have you discussed, before testifying here today with Special Agent Sturrock the conversations that you had with him?

A No, I did not.

Q Have you had occasion to discuss with him, before testifying here today, the substance of your testimony?

A No, I did not.

Q Do you agree that there are inaccuracies in the information contained within the form concerning this affidavit by Mr. Sturrock so far as it relates to conversations that he had with yo ?

A Yes, I will say that there are slight inaccuracies, yes.

Q In some respects it is incomplete as far as it relates to the conversation, is that correct?

A As far as it relates to the conversation I had with him.

Q Your conversation with him occurred on December 12, 1975, with respect to this case, for the first time, is that a fair statement?

A It was around within the same week. We had a number of conversations during that time.

Q Do you recall when the last conversation with him was with respect to the events related in this

affidavit?

A It was around that time.

Q Did you speak to him on more than one day, or did you have a number of conversations with him on one day?

A Yes, there was a couple of days that we discussed -- well, I would say one or two days, and do you mean with respect to the affidavit, itself?

Q Yes.

A Yes, there was a couple of days in which we were discussing it.

Q And these contacts were telephonic?

A That is correct, only telephonic.

Q And you state that they took place over a period, a total period of two days?

A I cannot narrow it down to the number of days. Like I said, my conversations with him were numerous, and I don't exactly remember with respect to the number of conversations that I had, that related only to the affidavit.

Q Did you discuss with him information that is not contained within the affidavit that relates to this case?

A Only with respect -- that is not in that affidavit?

Q Yes.

A I don't recall.

Q Did you talk to anyone else in connection with this

case?

A At that time?

Q At that time.

A Yes, I believe that that was -- there was another Special Agent from the same district office and I believe it was Tripp.

Q Special Agent Tripp?

A Yes, on one or two occasions.

Q During that same period?

A That was primarily because of the absence, I believe, of Mr. Sturrock.

Q And based on your review of this affidavit, before you took the stand today, is there anything contained in that affidavit that is predicated on information that you furnished Special Agent Tripp?

A Yes, there probably is information.

Q And are you able to identify it by reviewing the affidavit?

A I can't narrow it down exactly what I discussed with Tripp, and I did not discuss with Mr. Sturrock, apparently we were all discussing the same case, and exactly what I told Mr. Tripp, I don't remember at that time.

Q Well, is it your best recollection as you sit there now, that in substance you would have related the

same information to Special Agent Tripp that you related to Investigator Sturrock?

A Probably I would say yes, that that would be accurate.

Q At any time during the period of your telephone contact with Sturrock, did he question you with respect to anything that you said?

A Did he ask me with respect to anything that I said?

Q Yes.

A Well, he asked me a good number of questions.

Q Did he read anything back to you?

A I don't recall.

Q Did he ever indicate to you or through any suggestions, in the course of your contacts with him, that he was making notes as he spoke to you?

A I assumed that he was making notes because he was looking for information, and that was the basis of our conversation. Normally, it is primarily an exchange of information.

Q And did he ask you for the spelling of any words or terms?

A No, I don't recall that.

Q Did he ask you to repeat anything he said?

A I can't really say. I can't remember if he did. If he asked me to repeat anything.

Q Were ever furnished any information by Investigator

Sturrock as to the existence or presence of any agent other than the anthranilic acid?

Q Yes.

A I don't recall him giving me any such information.

Q So it would be a fair statement, then, that your conversation with him was confined to a discussion of anthranilic acid, and the possible uses in combinations of that agent?

A Possible uses, that is correct. And actually what was involved, it was also the synthesis of Methaqualone.

Q Now, did you know the purpose for which he was seeking this information?

A The purpose?

Q Yes.

A I am not exactly certain as to what was the real purpose. Normally when you do pursue this particular information it is -- well, it is because of a possibility of a clandestine laboratory being in existence.

Q Well, did he convey to you what the purpose was of his contacting you to get this information?

A Generally, I recall that -- that he approached me with a question as to the uses of anthranilic acid and apparently, we were -- it was made known that a good number of anthranilic acid was being shipped from a certain destination.

Q That was communicated to you by him?

A That is correct, and this is when we started getting onto the uses of anthranilic acid and our discussion primarily related to the uses of anthranilic acid, and its possible use in the manufacturing of a controlled substance.

Q Now, do you recall wheb, in the course of the contact that you had with him, that you communicated this information to him that is in part reflected in that affidavit?

A I do recall that during my conversation with him.

O Well, do you recall when it was? Was it upon the initial contact?

A I don't know specifically when.

Q When, in the course of your contact, early in the game, or in the middle of the game, or was it at the end of the game?

A I am sorry, I just can't seem to pinpoint exactly what but I get a number of telephone calls and there are other related general information calls which is related to other agents, and specifically I can't narrow it down with respect to what I specifically said on what particular date to Mr. Sturrock.

Q Were you ever asked to review any of the information contained in that affidavit prior to the time,

December 18, 1975?

A To review the actual affidavit?

Q Or any of the information contained in it?

A No, I was never provided with a copy.

Q Was any component of that affidavit ever read back to you over the phone prior to the time of the execution?

A No, I don't think so.

Q When did you first become aware that this information was being incorporated into an affidavit?

A I will not -- I am not exactly sure. Normally these things are -- that particular aspect of the investigation is solely conducted by the special agent. We normally don't get involved and so this particular discussion was --

Q Was it before or after the execution of the warrant?

A I can't answer that.

Q And we agreed that the information not included in the affidavit, which you did not communicate to Investigator Sturrock, qualifies the paragraph that is related in the affidavit?

A Could you repeat that again, please?

Q The information that is not related by Investigator Sturrock within the four corners of that affidavit with respect to being the only uses that you were

aware of, in respect to the commercial and industrial uses; can we agree that that information qualifies the statement that is recited in the affidavit?

A Can you -- I am not exactly sure that I understand your question.

THE COURT: Don't answer it, then.

BY MR. JONES:

Q Can we agree that the statement that the only other uses for anthranilic acid are in the manufacture of analgesic drugs and veterinary products, that that statement, if it is then followed, by as far as I am aware of, is qualified by that phrase as far as I am aware of?

A Is clarified by what?

A No, qualified.

THE COURT: Do you understand what he is asking you? He means if you wrote a statement would you want this in there, "as far as I am aware of"?

THE WITNESS: Yes.

BY MR. JONES:

Q Now, would you consider as the omissions to which you have already testified, material to the statement that is included in that affidavit?

MR. DREYER: Objection, Your Honor. That

is for the Court.

MR. JONES: I don't think it is.

THE COURT: I will let him answer it. Do you think it was important to put that in there?

THE WITNESS: Well, with respect to the facts that it would contribute to the accuracy of what I told him, I think it would be important.

THE COURT: All right.

BY MR. JONES:

Q And can we agree, then, that insofar as the statement omits information which you gave Investigator Sturrock, that statement misrepresents what you told Investigator Sturrock: Yes or no?

A The entire thing is not in misrepresentation but I say a partial.

Q Did you understand my question?

A Yes, you asked me if it misrepresents what I told him.

Q To the extent that those omissions which you have admitted exist were not related by Investigator Sturrock in that statement, does it misrepresent what you told him; yes or no?

THE COURT: Well, he doesn't want to state the word "misrepresent." Is that the way that you told it to him?

THE WITNESS: Well, I would say misrepresents;

there is accuracyin that statement and there are inaccuracies in that with respect to that particular phrase and that is it.

BY MR. JONES:

Q To the extent that there are inaccuracies, or some information that is incomplete, to that extent, can't we agree that the statement misrepresents the sum of what you told him?

A No, it does not misrepresent the sum total.

Q It is not accurate?

A It is partially accurate.

Q To the extent that it is only partially accurate, the converse would be that it is partially inaccurate.

A That is correct.

Q Then insofar as it is partially inaccurate it is not an accurate representation of what you told him.

A Based on the fact that it was a verbal conversation, I don't know to what extent the accuracy of an affidavit would be achieved.

Q I didn't hear the last part of it.

(The previous answer was read by the reporter.)

THE WITNESS: What I mean by that is if it was based on a telephonic conversation, I did not see a typed affidavit, so therefore I didn't

have the opportunity to review it.

BY MR. JONES:

Q You had an opportunity to review this affidavit before coming into court today?

A Yes, I did.

Q And you have had the opportunity to review the affidavit in the session that we are in right now, and as you sit there at the witness stand?

A We are discussing about reviewing the affidavit prior to --

A (Interrupting) No, I am not. My question to you is directed to the knowledge that you presently have and which you communicated to us. You agreed with us that the affidavit and specific exception that we are talking about right now was not fully and accurately representative of what you told Investigator Sturrock?

A That is correct. It is not totally accurate.

Q And to the extent that it does not fully represent what you told him, it constitutes a misrepresentation, does it not?

A Not a total misrepresentation.

Q But a misrepresentation?

THE COURT: Wait a minute. That is for me to decide and I will decide it.

MR. JONES: Thank you, Judge.

BY MR. SHANLEY:

Q Could you tell us where you are based?

A My base is at New York, New York.

Q And was it so during the month of December, 1975?

A Yes.

Q And had you worked with Investigator Sturrock before, and did you know him?

A Work with him? I knew him, but he was the Special Agent in charge of the district office here and we had certain limited telephone conversations.

Q Now, you recall that, if I understand your affidavit, Sturrock called you, yes a question, and is this a standard procedure where an agent might call and ask something directly from you, or is it unusual?

A Apparently, because I am a Supervisory Chemist. There are two supervisors in our laboratory. There are designated areas that we specifically service.

Q Well, was Sturrock referred to you by one of your underlings, or did he ask to speak directly to you?

A Normally, if there is any information that goes to a chief supervisor, they normally call on the supervisor, and that is how he probably called me.

Q He called you and that is your memory?

A That is correct.

Q Did you make any notes of the conversation?

A No, I did not.
Q Do you recall that, as you sit there now, and it is only some four months ago, or three months ago, what he said to you when he called; I mean Sturrock?
A There was a number of conversations that I had with Sturrock relating to this particular case.
Q I mean the first one, when he first familiarized --
A (Interrupting) In the first conversation.
Q Yes.
A Well, the first conversation, I feel quite sure it had to do with the use of anthranilic acid.
Q I see. And had you ever heard of anthranilic acid before?
A That is correct.
Q And did he tell you anything about any quantity?
A Yes, he did. I believe so.
Q And do you recall the quantity that he gave you?
A I think it was about 2,000 pounds.
Q 1,000?
A No, 2000 pounds.
Q And did you regard that as significant?
A Yes, I did.
Q In what respect?
A Well, it was a significant quantity, that of a precursor that is commonly employed in the manufacturing

of controlled substances.

Q And do you know the amount that would make of a controlled substance?

A Well, roughly I would say it is almost a two-to-one ratio, and if you had about 2,000 pounds you would wind up with about 3,000 pounds of Methaqualone.

Q Did you regard this as significant?

A Certainly.

Q And you made no notes of your conversation?

A No, I normally do not.

Q You normally do not?

A We normally do not, just with respect to a conversation between agents we do not record all our conversations.

Q Well, was it then that you gave him the information on the occasion of that first telephone call reciting about paragraph 3(g)(1) and (2)?

A On that first conversation, no. It was not -- it was not during our first conversation.

Q All right, during the second conversation?

A It could have been any conversation after that first one. I am not exactly sure when.

Q How many were there?

A Well, we had quite a number of telephonic contacts.

Q About how many?

A I would say a rough estimation would probably be about

six or maybe seven or eight.

Q And you made no note of any of them?

A I said that I do not make any notes of any conversations with agents.

Q Regarding whether or not the case is, it would be regarded as a major case, or just the passing inquiry over the phone and you would make no notes?

A That is correct.

Q And did anybody -- did Sturrock ask you for anything in writing?

A No, he did not.

Q Did he ask you to come to Albany?

A No, he did not. But apparently he did not.

Q And you didn't go to Albany?

A No, one of our other chemists went to Albany.

Q And when was it that you first saw the affidavit involved?

A The first time I saw the affidavit was when, I believe -- let me see -- I spoke to Bill Rider, and he told me that apparently there is a suppression hearing going on.

Q Is that recently?

A Yes, I believe it was yesterday that I got the call.

Q And did you physically examine the affidavit at that time, or shortly thereafter?

A Yes.

Q And who was it by?

A By?

Q Yes, who made the affidavit?

A I just saw that particular part of the affidavit relating to what I had discussed with Mr. Sturrock. I didn't see the whole affidavit; no, I did not.

Q Do you know who made it?

A No, I do not.

Q Did you examine it this morning?

A The whole affidavit? No, I just read Paragraph 3(g)(1) and 3(g)(2).

Q Do you have it in front of you still?

A No, I don't.

THE COURT: Well, here is the original.

BY MR. SHANLEY:

Q Do you have it now?

A Yes, I do.

Q Who is it by?

A Raymond Tripp.

Q But your conversation was with Sturrock?

A Sturrock and Tripp.

Q Well, who did you speak to most?

A Most of the time I spoke to Sturrock.

Q Okay. Now, did you relate -- do you recall any

conversations that you had with Tripp as opposed to Sturrock?

A It was some time -- it was relating to the same particular case.

Q Do you have any notes which would indicate?

A No, I do not have any notes of my conversations.

Q And the matter that appears in Paragraph 3(g)(1) and (2), was this related in the conversation?

A Pardon me?

Q The matter that appears in Paragraph 3(g)(1) and (2)?

A Yes.

Q Who was that related to?

A It is relating about me.

Q Who did you relate it to?

A I am quite sure that I related it to -- I am pretty sure it was Sturrock and Tripp together. We had like a dual conversation, possibly, and I am pretty sure that there was three of us on the phone.

Q This is the first time that you have mentioned that, isn't that so?

A There were times during the conversations where Tripp would pick up the phone at the same time that I am talking to Sturrock. He would pick up an extension phone.

Q You didn't tell us before.

A No, I was never asked.
Q But didn't you indicate to Mr. Jones and Mr. Michaels that you had related this information to Mr. Sturrock?
A I talked to Mr. Sturrock and I spoke to Tripp.
Q Now, wait a minute, didn't you first indicate to Mr. Michaels and Mr. Jones that you spoke to Sturrock; yes or no?
A Yes, I did indicate that I spoke to Sturrock.
Q And then when I point out that Tripp had made the affidavit then you say that you also spoke to Tripp, isn't that so?
A Most of my conversations -- if I may be allowed to explain -- most of my conversations were with Sturrock. But I do recall them, there were specific matters also relating to the uses, and Tripp was also on an extension phone. Now, it may be related to the matters that are in this particular affidavit. I am not exactly sure. If he said it was what we were discussing in the affidavit, but I did have conversations with Sturrock and Tripp, and there are times when all three of us were on the same line.
Q And you are now adding that to the previous testimony, are you not; the fact that Tripp was on the phone?
A No, I am just clarifying my previous testimony.
Q All right. Now, were you ever asked to submit an

affidavit?

A No, I was not asked to submit an affidavit.

Q Were you asked to submit, by either Sturrock or Tripp any reports in writing?

A No.

Q Concerning the substance of Paragraph 3(g)(1) or (2)?

A No, I was not.

Q Did Sturrock or Tripp, at any time, telephone you and read to you Paragraph 3(g)(1) or (2)?

A I don't recall if they did or not. But I don't recall if they did or not read 3(g)(1) or (2). But I am not sure of him reading -- I don't recall him reading something back to me in writing.

Q Well, all right, let me ask you this; did he ask you to come to Albany to review that testimony?

A No, he did not ask me to come.

Q I am sorry, the affidavit.

A No, I was not asked to come here.

Q Did he send a copy of that affidavit to you in New York City?

A No, he did not.

Q Were you aware --

A (Interrupting) Let me just think and clarify that. He did not send me a copy of the entire affidavit. Just yesterday I received this portion of the

affidavit.

Q I am talking about before the execution of the warrant.

A No, I was not sent a copy of the affidavit.

Q Did Sturrock mention to you the words "search warrant"?

A Yes, he did.

Q And you knew that he was -- did you know that he was going to make an affidavit?

A No, I did not.

Q And in your line, forensic expertise, you are aware, are you not, that you need an affidavit to obtain a search warrant?

A Yes, to a certain degree I am, but I am rarely ever given copies, and, in fact, I don't ever recall receiving copies of an affidavit for a search warrant.

Q But you knew that Sturrock was going to make an affidavit for a search warrant, and isn't that why he told you he was calling you?

A I am not exactly sure if he specified he was writing an affidavit.

Q So you didn't know the purpose of why he was getting that information from you?

A That is correct.

Q And you had no idea?

THE COURT: You have to answer.

THE WITNESS: Are you asking me if I had

an idea. I can't specifically say if I had no idea. He may have mentioned this on the affidavit, but I can't say specifically if it was for an affidavit. I know that we were on the telephone discussing it, and he may have mentioned it was for an affidavit. I rarely see affidavits, so therefore I guess I just didn't take it too seriously with respect to if he was quoting or writing something down as I was conversing with him.

BY MR. SHANLEY:

Q So you didn't take it seriously?

A I didn't say that.

Q After he mentioned that the figure of 2,200 pounds or 2,000 of anthranilic acid?

A Every laboratory, any information regardless of size, we actually pursue information to provide it to the agents.

Q But this amount would indicate an enormous production capacity, would it not?

A Yes, it would.

Q And probably more than you have ever dealt with before?

A Probably.

Q And knowing this, you still had no idea that you wanted --

A (Interrupting) I can't say I had no idea. But I say I can't recall and I just do not recall him specifically stating that he is going to quote me for the purpose of an affidavit.

Q And if you had known this, as a fact, you would have taken much more care?

A No, I think that I would have generated the same information, and specifically I normally do not just take information off the top of my head. I try and pursue as much accurate information as I possibly can.

Q And would it be fair to say that you gave him this information off the top of your head?

A No, I did not just give him the information off the top of my head. I said primarily and initially, I said I am not aware of any uses. But I pursued it and tried to find out further uses, and I still came up with the same conclusion.

Q And would you turn to Paragraph K?

A Paragraph what?

Q Paragraph K, do you have that?

A Yes, I do.

Q And do you see the word "ether" there?

A Yes,

Q And is that a precursor o Methaqualone?

A A precursor for Methaqualone?

Q Yes.
A No, it is regarded -- I would not regard it as a precursor.
Q How about sodium?
A No, I would not regard that.
Q And how about sodium acetate?
A No.

MR. SHANLEY: May I have a moment, Your Honor?

THE COURT: Yes.

MR. SHANLEY: I have no further questions, Your Honor.

BY MR. HERRICK:

Q You are aware that Methaqualone and Mecloqualone are controlled substances?
A Yes.
Q And are you aware of the date that they became controlled substances?
A Right now, no, but I do not have that information, but I know it is about approximately two years ago.
Q Approximately three years ago?
A No, approximately two years ago.
Q And during the time that they had been controlled substances, how many times had you worked in your laboratory for the D.E.A. or any other police agency

with these chemicals?

A During the time that they were controlled.

Q How many times have you worked with them as controlled substances?

A As controlled substances I personally -- are you asking if I analyze them?

Q How many times have you worked with them in your laboratory?

A I review all of my work sheets that are submitted by my chemist.

Q How many times have you personally worked with these items?

A That was prior to being controlled.

Q Have you ever manufactured Methaqualone?

A No, I did not.

Q Have you ever dealt with a case where Methaqualone was manufactured?

A Are you saying I was personally involved in the case?

Q Yes.

A No, I did not.

Q Have you ever testified in a court of law, or made any affidavits in reference to a criminal case in reference to Methaqualone, prior to this instance?

A I don't recall, no, I don't recall.

Q Now, on or about December 12th, 1975, you received a

phone call from Special Agent Sturrock here in Albany, is that correct?

A Yes.

Q And you testified that phone call was at your office in New York City, is that correct?

A That is correct.

Q And during the week of December 12th, prior to the 18th of December, you spoke with either Special Agent Sturrock or Special Agent Tripp on several occasions?

A Yes.

Q To the best of your recollection, how many individual phone calls did you receive or place to those agents?

A As I said before, it was about eight.

Q About eight?

A Yes.

Q And how many of those approximately eight phone calls were both Special Agents Tripp and Sturrock on the phone at the same time?

A I would say about three times.

Q Special Agent Tripp would, at times during the conversation, get on the phone or you would hear his voice and you, I believe, and correct me if I am wrong, you stated at times he would come in with certain information, and is that correct, in your first phone conversation?

A In my first conversation with Mr. Sturrock?

Q Right. I believe that you stated to Mr. Shanley who just questioned you, that in the first phone conversation it was a three-party conversation?

A No, I didn't say that.

My first conversation was with Mr. Sturrock direct, but after, following conversations there were also times that I spoke individually with Mr. Tripp or also there were times when all three of us would be on the phone together.

Q Now, dealing just with the times that all three of you were on the phone; during the entire length of those specific -- were all three of you on the phone? Did there come a time during any one of those three-party conversations that one of these agents would leave the phone conversation?

A I don't recall.

Q Now, you had approximately eight, a total of eight, phone conversations with these special agents, and you stated that you kept no notes, is that correct?

A That is correct.

Q Did you open a file in reference to this matter, or keep any other records?

A Not with respect to this particular case.

Q In your phone conversations with Special Agents Tripp

and Sturrock, were any of the other facts in reference to this case related to you?

A Any of the other facts?

Q That are contained in that affidavit, were they related to you?

A Which facts are you referring to?

Q Specifically, did Special Agent Tripp or Special Agent Sturrock mention where this anthranilic acid was purchased?

A No.

Q Did they mention any other pharmaceutical or drug companies?

A No, I don't think that they were aware of that at that time, because I was trying to pursue this information, too.

Q And did he mention any other chemicals or drugs?

A Not that I could recall.

Q Who first mentioned Methaqualone?

A Who first mentioned Methaqualone?

Q Yes.

A I think I did but I just can't exactly recall, but I think I may have, or he may have.

Q So in substance, Special Agent Sturrock in his first conversation related some basic facts to you?

A Yes.

Q And asked for your opinion as to where that might lead, is that correct?
A What can be made from it?
Q What can be made from it.
A Yes.
Q And your reply was Methaqualone?
A My reply was that it can be employed for the manufacturing of a controlled substance such as Methaqualone, or Mecloqualone.
Q And that was the first conversation that you had with them?
A Yes, probably.
Q And this is before you referred to any of the textbooks, or sources of information that had been mentioned here today?
A That is correct.
Q And during this first conversation, to your knowledge, was Special Agent Sturrock making any notes?
A I don't know.
Q Did he ask you to spell anything for him?
A There were times when he did ask me to spell things.
Q Did he ask you to slow down when you were relating something to him?
A No, he asked me to spell certain words and I don't recall what they were. But he did ask me to spell

certain chemical terms. That was just like our first conversation.

Q Did you ever ask Special Agent Tripp or Special Agent Sturrock to repeat to you the spellings of certain words, or what you had related to him?

A No.

Q And that included also the spelling of chloryl chloride?

A No.

Q When did you first open a file or a record in reference to this case?

A Primarily the only records that we have in our lab are the records relating to the results of analysis on the submitted evidence.

Q And into that file did you place any notes or memoranda of your conversations between yourself and Special Agent Tripp or Sturrock?

A No, I did not but I have to clarify something in respect to the spelling like I said at the time back, I know he stuttered because of the chemical nomenclature and it was not understood by Lon Sturrock, and I don't know if I spelled it or pronounced it improperly so that he could understand them.

Q Did he speak or pronounce for him each of the chemicals that are contained in 3(g)(1) of the evidence?

A Each one of the chemicals? No, I did not.
Q Would you refer to 3(g)(1) for a moment, and do you have it?
A I have a copy from His Honor.
Q Did he ask you to spell anthranilic acid?
A I don't recall if he asked me to spell these precursors.
Q And that would include chloryl chloride?
A I believe I definitely recollect that it wasn't chloryl chloride. As I testified before, I did not know the existence of such a thing.
Q Did you spell Methaqualone or Mecloqualone?
A I don't think so.
Q And did he ask you to spell anthranilic acid and acetic acid?
A I don't recall.
Q How about acetic anhydride?
A No.
Q How about acetyl-anthranilic acid?
A I don't recall.
Q Ortho-toluidine, and I don't even know if I pronounced it correctly.
A No, you didn't.
Q Did he ask you about that?
A I don't recall if I spelled that.

Q In reference to the last sentence in 3(g)(1), ortho-chloraoniline or acetyl-anthranilic acid, did he ask you to spell them or pronounce them?
A With respect to that I don't think so.
Q Did he ask you to repeat those?
A He may have asked me to repeat them but I just can't be definitely certain that he did ask me that or not. There was hesitation involved. We did repeat a couple of things and I don't know exactly what.
Q And it is your testimony that you gave the same exact information to Special Agent Tripp that you gave to Special Agent Sturrock, is that correct?
A I am quite sure that I did.
Q And did you -- did Special Agent Tripp ask you to spell any of these items that I have mentioned to you or to repeat them?
A I don't remember.
Q Do you know that Special Agent Tripp or Special Agent Sturrock have any background in chemistry?
A No, I do not.
Q Did you ask them if they had any background in chemistry?
A I did not.
Q Did they ask you to spell phosphorous trichloride?
A I don't remember.

Q Do you remember if you mentioned phosphorous trichloride?

A I am quite sure I did, but there was also some other things that I said that could be utilized in its place. Phosphoryl trichloride or phosphorous trichloride and phosphorous oxic chloride and these terms were generated in the conversation, items which would be used replacing -- one can be used instead of the other.

Q And did you spell any of those other terms or chemicals or chemical agents?

A I don't remember.

Q Are any of those agents or chemicals mentioned in 3(g)(1) of the affidavit?

A The only thing I see here is chloryl chloride.

Q And that is not one of the items that you just mentioned?

A Those are not one of the items that I mentioned.

THE COURT: Is that all? Mr. Herrick do you have anything?

MR. HERRICK: I have nothing.

MR. DREYER: I have nothing on redirect.

THE COURT: You are excused.

(Whereupon, the witness was excused.)

THE COURT: Mr. Dreyer, in the interest

of time, I have to find out now what you propose to do. Is all of the evidence in?

MR. DREYER: As far as the government is concerned.

THE COURT: That is on the motions to close this search warrant, or to controvert it.

MR. DREYER: The government has no further witnesses to call on the search warrant.

THE COURT: Does the defense have all their witnesses in on that?

MR. JONES: No, Your Honor, we don't.

MR. MICHAELS: May we have a five-minute recess to confer.

THE COURT: Yes, we will take a ten-minute recess because, as I told you our circumstances, I am the only United States Judge in this district here. You can have ten minutes. This is a good example, and another newspaper reporter just came in, to cite that we need a third judge here because I cannot do all of the things that are now before us.

MR. JONES: I think that there should be an editorial in the paper tomorrow morning.

THE COURT: We should have another judge, but anyway, we will take ten minutes and maybe

you can decide how much more we have to pursue. On any other questions, maybe we can defer those until the 19th. That is for whatever problems you might have on the execution of the search warrant and so forth.

Talk about those propositions.

THE CLERK: The court stands in recess.

(After a short recess the proceedings were resumed.)

MR. MICHAELS: The defense recalls Mr. Frank Soa.

F R A N K S O A,

having been previously sworn, was examined and testified further as follows:

BY MR. MICHAELS:

Q What are the standard chemical reference books or publications with regard to the uses of a substance?

A You can go to the chemical abstracts and the chemical abstracts compile the subject matter in the area of about 40,000 different scientific publications throughout the world. By looking under a particular heading you can find the uses and the various derivatives of the particular compound involved.

Q And do you know within your expertise whether the

Chem Abstract prior to 1954 would include the uses of anthranilic acid?

A Yes, it would.

Q Would it state dye chemistry?

A Yes, it would.

Q What other standard chemical reference works would a qualified chemist check to determine the uses of a substance?

A Well, of course, you could go to various encyclopedias, chemical encyclopedias and check on the subject matter. Curt and Ofmer is a fairly good example of that. Curt and Ofmer lines it up, and I think that we even have a Xerox copy on anthranilic acid, and in there, he not only describes briefly the preparation, but he also describes its various uses, and it gives the actual production over a period of, I think, of approximately ten years.

Q Would it be difficult for a qualified chemist to determine what the uses of this substance are?

A No, it would not. If you had the right chemist it would be relatively easy.

Q Is it necessary to start with anthranilic acid in order to produce Methaqualone, in your opinion?

A No, you could start with other materials, and actually not anthranilic acid, and end up with Methaqualone.

Q In other words, Methaqualone is not the essential starting point -- withdrawn. Anthranilic acid is not the essential starting point in order to make Methaqualone, is that right?

A You could start in a different area.

Q If a person were to make or to attempt to make Methaqualone from anthranilic acid, how much acetic anhydride would you need -- and that is the chemical number six (spell it out on the board).

A It takes approximately just about an equal weight -- pretty close to an equal weight.

Q Well, could a person who wanted to make Methaqualone, starting from anthranilic acid, could he do that with one percent as much acetic anhydride as you said?

A No, he could not.

Q Who is the largest producer of anthranilic acid?

A Sherwin-Williams at this particular time, sir.

Q Is it difficult for a chemist to find out that fact?

A Not at all.

Q Does Sherwin-Williams, itself, inform the chemist of the uses of the substance?

A Yes, they have -- they put out publications that describe some of it.

Q Have you seen many references in the professional literature on the uses of anthranilic acid, and have

you seen it repeatedly?

A Many references to the uses, yes, I have.

Q And dye chemistry also mentions it?

A Practically always.

Q Dr. Soa, if you combined substance No. 1, anthranilic acid with substance No. 6, where they would react with either a heat or catalyst or something of that sort, what would you get?

A I would get anthranilic acid and acetic anhydride. I would get --

THE COURT: Do we need this? Is this in the form of some rebuttal? The government chemist agreed with what you are saying.

MR. MICHAELS: I believe that the government chemist said something different, but I agree that the general gist of that was that these substances could be combined in any number of ways.

THE COURT: This man testified at length before about all of the uses and the books and so forth. I know all about that.

MR. MICHAELS: Thank you, and I will cease that line of question.

BY MR. MICHAELS:

Q How large a field, in terms of volume and production

is the field of dye chemistry as a whole?

A Well, it runs into the millions of pounds.

Q And what is the basis for that opinion that you have just stated?

A The basis is that the government puts out publications yearly, which is a summary of the production of various types of dyes, and broadly of the overall dye field.

Q Are these government figures difficult for chemists to obtain?

A No, they are not.

MR. MICHAELS: Thank you.

I have a couple of more questions.

BY MR. MICHAELS:

Q How much acetic anhydride do you need in order to make 2200 pounds of that acid in the Methaq-alone?

A Approximately 2200 pounds. The weight relation is 100 to four for the acetic anhydride, and on the anthranilic acid it is about 137. But usually it is used in chemistry, you usually use a slight excess of one or the other materials. So it would take approximately the same weight.

MR. MICHAELS: I have no further questions.

BY MR. DREYER:

Q I think that you said in your direct testimony that anthranilic acid is not an essential element of

Methaqualone or is it your testimony that anthranilic acid may not necessarily be the first precursor or substance used in the preparation of Methaqualone?

A Well, I said that anthranilic acis is a precursor to a preparation of Methaqualone.

THE COURT: Do you need it to wind up with Methaqualone?

THE WITNESS: Yes, this is one way of doing it. It is not the only way of doing it.

BY MR. DREYER:

Q In other words, you stated in your direct examination that you could start the preparation of Methaqualone at some other point?

A Yes.

Q You did not indicate to the Court that anthranilic acid would not be an essential ingredient if you chose to start someplace else, isn't that correct?

A I don't know that I mentioned it that particular way, but actually you can start with other derivates, and I think that that is what you would like to know.

Q And even if you start with them, there would come a time in the process when anthranilic acid would be a necessary ingredient?

A It would start at a place where you wouldn't be using anthranilic acid.

Q But would there come a time when you would have to use anthranilic acid?

A Not from your starting point. In other words --

THE COURT: (Interrupting) Now, let's simplify this for me. When you get to the finished product, do you have Methaqualone?

THE WITNESS: I have never mace it.

THE COURT: Ever around when it was made?

THE WITNESS: No, I was never around.

THE COURT: Could you have it without this acid being in it?

THE WITNESS: From the chemistry point of view, you can actually start at --

THE COURT: (Interrupting) I don't care where you start or finish or whether you are in the middle or at the end. But when you have the product, can you have the product without the presence of that acid?

THE WITNESS: I think that I could answer yes.

THE COURT: You could have it without it?

THE WITNESS: You could have it without starting --

THE COURT: (Interrupting) I don't care about starting or at the end. Life cannot be

that complex. At the end when you get the product, is there acid in it?

THE WITNESS: Yes, it has got the making of that acid.

THE COURT: Does it have to be in it?

THE WITNESS: It has to have those particular things, yes.

MR. DREYER: I have no further questions.

(Whereupon, the witness was excused.)

MR. MICHAELS: Just wait a moment.

MR. KEITZMAN: I have a few other questions.

THE COURT: This is getting to be repetitious and I have certainly listened patiently.

BY MR. KIETZMAN:

Q You have testified in response to the Judge's question that in your expert opinion, the grouping of chemicals that are present in anthranilic acid would have necessarily been present in the finished product of Methaqualone?

A Yes.

Q Now, in all of the variety of ways that you have testified that there are to manufacture Methaqualone, is one necessary ingredient always anthranilic acid?

A No.

MR. KIETZMAN: No. Thank you.

MR. DREYER: I have no questions.

THE COURT: Thank you. You are excused.

(Whereupon, the witness was excused.)

THE COURT: Anything further on the question of controverting the search warrant?

MR. DREYER: Nothing by the government.

MR. MICHAELS: Nothing further on behalf of the defense, Your Honor.

MR. KIETZMAN: No, Your Honor.

THE COURT: What is your other witness, and what particular problem would he testify to?

MR. DREYER: Well, the main attack against the warrant concerning probable cause which we have just completed, and the method of entry.

THE COURT: I have read about that and the nighttime entries and whether they announced themselves, and can't that wait for another day? Ordinarily, I would hear that at the time of trial.

MR. DREYER: The other issues that would be incorporated into the testimony of the witness deal with the forced entry and that would be the arrest of Mr. Lee, the seizure of items from Mr. Lee's person, and premises, and seizure of items from Mr. McDonald's premises and residence,

and arrest of Mr. Newman, and arrest of Mr. Winner and seizure of items from Mr. Winner and Mr. Newman. That is what we were going to go into this afternoon.

However, if the Court desires to defer those issues until a later time, then what the Government proposes, at least the Government should be given an opportunity to put on the record the manner in which rhe Search Warrant was executed so that we can then move the Court to determine the issue of the validity of the Search Warrant without proceeding to the other constitutional issues in this case, because we don't think that the arrest of the defendant and the seizure of property from their homes in any way involve the validity of the Search Warrant insofar as we have been discussing, that is.

THE COURT: These other things that happen, and I read your memorandum of law and the affidavit and so forth, as they relate to matters that would ordinarily be matters for suppression, wouldn't they?

MR. DREYER: Yes, Your Honor.

THE COURT: At the time of trial, and whether you are going to use them is something

that you would have to make a judgment about.

MR. DREYER: Yes, that is correct.

THE COURT: But I only want to hear what relates to this search warrant now.

MR. DREYER: We are finished with that, except Mr. Jones did make a motion which goes to the heart of the search warrant in that an agent who served the search warrant didn't serve it properly, that is by making a forced entry concerning 18 U.S.C. 3109 without properly announcing themselves. If you want to defer that issue, we can do that and limit ourselves to the issue of probable cause.

THE COURT: No, I would take that part. How long will it take?

MR. DREYER: Five minutes.

MR. JONES: Maybe five minutes with him, Judge, or maybe a little longer at the end.

MR. DREYER: That is for the direct examination.

THE COURT: Just the execution of the warrant.

MR. DREYER: Yes, from the knocking on the door to the entry into the house.

THE COURT: Well, I am open for suggestions,

but I have to start with the other case at 2 o'clock. I can't hold those people up any longer. I think that what I would like to do, you have all looked at that search warrant, and whether the affidavit supporting it is sufficient to give probable cause to the grant of the search warrant, and I think that that is important enough, and it seems to be one of the main elements of the defense of the case, and Mr. Jones has stated that but I think that maybe you should brief that, and we could hear the rest of the other questions that you have on April 19, in the afternoon.

MR. DREYER: The Government concurs.

THE COURT: I don't know, do you gentlemen have any ideas on that?

MR. DREYER: It is just a matter of time.

THE COURT: We will have to have 28 hours a day to do the business in this court here, but I think that somebody, and I don't know whether the defense is going to coordinate this in one brief, but I think that you should pick up what we have here now and brief it quickly, as quickly as you can,pointing out the factual matters that were developed.

MR. MICHALS: We find ourselves so much confused as to the purpose of briefing further, after brief presentation of the motion papers, and we would wonder whether it might not be possible for the defense counsel to address the question of the sufficiency and validity of the search warrant prior to adjourning whatever necessary portion of the proceedings must be deferred. I believe that we have all of the evidence before the Court to serve as a basis for these actions, but perhaps we might conclude them as to sufficiency and the priority of the warrant itself, today.

THE COURT: You mean that orally.

MR. MICHAELS: Yes.

THE COURT: That is what I want you to do in writing, and summarize it all the same as you would in the discussion of the facts as you think that they favor your side, or at least support sufficiently the sufficiency of the affidavit and the grant of the warrant.

The witnesses haven't been many, and I think it is still a summary of the facts as you view them, partially as the pertinent law applies to the factual situation that you have developed.

MR. MICHAELS: Very well.

THE COURT: I think that you ought to do it that way, but how long do you want to do that?

MR. MICHAELS: How long will it take to get a transcript?

I would like to confer with my counsel for a moment.

Your Honor, we are edging up toward a bench conference.

THE COURT: No, get your papers in by the 15th. We are checking on the other papers and I have some other motion papers.

I think that we should put on the record that you are to file an exchange by April 15th, and a summary of the fact, and any further law that they think necessary, and file an original with the Clerk and a copy to me in my Chambers on Thursday, April 15, and I have already indicated that I have made rulings on your discovery, and the bill of particulars and so forth, and that Mr. Dreyer should draw some type of blanket order in regard to those rules and the severance of Lazarski.

MR. DREYER: As I spoke to you earlier, I have not endorsed all of the motion papers

because we don't have them all. I may do that, but I will need an order, a blanket one or a separate order.

I have written down all of this, and I will submit an order sometime this week.

THE COURT: Show it to the other lawyers.

MR. DREYER: Yes.

THE COURT: We will stand in recess until [illegible] o'clock.

THE CLERK: Court stands in recess until 2 p.m.

(Whereupon, a recess was taken until 2 p.m.)

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MEMORANDUM DECISION AND ORDER ON MOTIONS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs. 75-CR-166

PETER M. LAZARSKI, CRAIG L. NEWMAN,
NEIL B. WINNER, and YOK LEE

UNITED STATES OF AMERICA

vs. 76-CR-15

MARK McDONALD

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PAUL R. KLITZMAN

JAMES T. FOLEY, D. J.

MEMORANDUM-DECISION and ORDER

The defendants have made separate motions pursuant to Fed. R. Crim. P. 41(f) for the suppression of evidence consisting of substantial quantities of a drug known as methaqualone or mecloqualone,

certain chemical ingredients such as Anthranilic acid, chemical paraphernalia such as bottles, filter paper and specialized glassware, and paperwork related to a chemical operation such as notebooks. See Appendix attached to Search Warrant and Affidavit (filed December 29, 1975). These items were seized pursuant to a search warrant issued by Magistrate John H. Spain of Troy, New York, on December 18, 1975, authorizing on the basis of a supporting Affidavit executed by Special Agent Tripp of the United States Department of Justice, Drug Enforcement Administration, Albany, New York (hereinafter DEA), the search of a residential house leased to defendant Lazarski. The motion of the government to consolidate the indictment of McDonald with the other indictment, 75-CR-166, was granted from the Bench on April 5, 1976.

The issue presented by the motions on behalf of all the defendants is simply whether the Affidavit of Special Agent Tripp supplies sufficient probable cause to support the search warrant issued. A hearing was held in the omnibus sense with all attorneys participating on the similar motions on April 5 and 6, 1976, at which time the defendantspresented two witnesses expert in chemistry. At that time the government conceded under settled law that this determination of probable cause must be made within the four corners of the affidavit, Aguilar v. Texas, 378 U.S. 108 (1964), and that the defendants have standing to challenge the seizure of the materials under settled law. See United States v. Tortorello, _____F.2d_____, Slip Op. 2879, 2886 (2d Cir. April 1, 1976); United States v. Lang, 527 F.2d 1264 (4th Cir. 1975)(per curiam). Thus, this discussion will focus upon the information provided in the Affidavit and the arguments of defendants in light of the expert testimony presented by their witnesses at the hearing.

The fundamental facts which the Affidavit of Special Agent Tripp by its content placed before the magistrate avers:

(1) Special Agent Healy of DEA posing as an employee of BASF

Wyandotte Corporation, a chemical supply company, assisted defendant Newman and his unidentified associate in loading two thousand, two hundred pounds (20 bags) of Anthranilic acid into a rented truck at Newark, New Jersey. The purchase order shows that the "Wilmington Farm Co-op" of Wilmington, Vermont, placed the order. Affidavit, 3(a).

(2) That further investigation indicated that the "Wilmington Farm Co-op" was a fictitious name, yet on the same name previous orders for four hundred and forty pounds of Anthranilic acid with another chemical supply company had been made.

(3) The delivery of over one ton of Anthranilic acid was made to the house identified in the search warrant. The house in a suburban area of Albany County was leased by defendant Lazarski, and had his name on a plate on the outside of the house. Affidavit, 3 (b and c).

(4) On December 11, 1975, Special Agents of DEA commenced a surveillance on Lazarski's residence. Affidavit, 3 (b-d). They observed according to the Affidavit that the windows were covered by various coverings, including boards, cardboard, and venetian blinds. Affidavit, 3 (f). The arrival and entry of defendants Newman and Winner to the house were noted, the latter being known through a license plate check of his automobile. Affidavit, 3 (e).

(5) A record of telephone toll receipts, obtained by subpoena, for the telephone numbers listed in the names of defendants, Lazarski, Newman and Winner showed numerous calls were made to many chemical companies. Affidavit 3 (j). Following up this information, investigation discovered that defendant Newman had already picked-up quantities of other chemicals such as Ether, Sodium, Sodium Acetate and Acetic Anhydride, and had back-ordered 48 kilograms (approx. 100 pounds) of Ortho-toluidine. Affidavit, 3 (k).

(6) Lastly, Special Agent Tripp discovered and stated that Lazarski is a chemical technician at the Hudson Valley Community College [Affidavit, 3 (l)] and that it was possible to use the

chemicals known to have been accumulated by the defendants to make methaqualone and or mecloqualone, a controlled substance under Schedule II of Subchapter I of Title 21, United States Code, Chapter 13. Affidavit, 3(g) (1 and 2).

It will be noted here that it is this last piece of information that forms the pillars of defendants' attack on the accuracy and validity of the Affidavit. They present a two-fold argument: (1) that the chemical "chloryl chloride" listed in paragraph 3(g)(1) as an ingredient of methaqualone does not exist, and other chemicals listed contain errors in their technical names, and (2) that speaking from the frame of reference as provided by their chemical experts, Anthranilic acid is not necessarily a "precursor" to methaqualone as recited in paragraph 3(g)(1) nor is its use in the chemical industry limited "only" to the manufacture of methaqualone, mecloqualone, analygesic drugs and certain veterinary products, as recited in paragraph 3(g)(2). It is on this basis that defendants argue that it was possible to infer that they were engaged in the chemical manufacture of legal substances. In my judgment, these contentions are largely matter of semantics under settled case law, discussed infra, and do not invalidate this otherwise detailed Affidavit and the search warrant based on it.

I begin this legal analysis evaluating the constitutional validity of the search warrant as the United States Supreme Court began in the leading case of United States v. Ventresca, 380 U.S. 102, 105 (1965), with the crucial observation that "in this case a search was made pursuant to a search warrant." The Court went on to state that:

> courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a common sense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrated the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants. * * *.
>
> Id., at 109.

It is this important consideration, inter alia, which, in my judgment, distinguishes the instant case from the analogous facts presented to District Judge Curtin in United States v. Failla, 343 F. Supp. 831 (W.D.N.Y. 1972). In Failla no warrant was obtained before the search was conducted and Judge Curtin granted the motion to suppress the seized evidence. However, the very fact that no warrant was obtained means that the policy of the Fourth Amendment -- to have the determination of probable cause to search made by a detached and neutral magistrate -- must be considered a critical missing factor that would justify the invalidation of the warrantless search. See Gerstein v. Pugh, 420 U.S. 103, 116-119 (1975); Coolidge v. New Hampshire, 403 U.S. 443, 449-453 (1971). A vivid illustration of where a search warrant became the critical margin in swinging the balance and disallowing evidence to be used in a trial is the case of Johnson v. United States, 333 U.S. 10, 13 (1948). There, Justice Jackson observed that "the officers were possessed of evidence which a magistrate might have found to be probable cause for issuing a search warrant." Yet the evidence was nevertheless suppressed for lack of a warrant because the decision to "search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent." Id. at 14. This policy has been endorsed time and time again in the courts.

Although the warrantless search and seizure in Failla was held to violate the Fourth Amendment, Judge Curtin did characterize as a "red flag" the discovery by drug enforcement agents that a chemical precursor or principal ingredient of a controlled substance had been purchased. Such a fact should, he said, alert law enforcement agents of possible criminal activity. United States v. Failla, supra, 343 U.S. at 835. The facts here are agents actually assisted defendant Newman in loading over one ton of Anthranilic acid -- a precursor or ingredient -- into a rental truck. If the quantity in Failla was a "red flag", the quantities here are in the realm of even greater

warning signal sufficient to alert agents to possible criminal activity being conducted on a large scale. Cf. United States v. Welebir, 498 F.2d 346, 351 (4th Cir. 1974).

There are, of course, no set formulae or lists of individual factors which add up to probable cause. See Rosencranz v. United States, 356 F.2d 310, 313 (1st Cir. 1966). Probable cause is a judgment based on reasonable inferences, common sense and "probabilities" rather than "certainties." See United States v. Jenkins, 525 F.2d 819, 823-824 (6th Cir. 1975)(per curiam); United States v. Rahn, 511 F.2d 290 (10th Cir. 1975), cert. den., 423 U.S. 825 (1975); United States v. Patterson, 492 F.2d 995, 997 (9th Cir. 1974); United States v. Rubio, 404 F.2d 678, 681 (7th Cir. 1968), cert. den., 394 U.S. 993 (1969); Newcomb v. United States, 327 F.2d 649, 651 (9th Cir. 1964). Although the cases are all distinguishable when viewed under their totality of facts, nevertheless many similar factors may be compared individually. The purchase of a chemical precursor or substances known to be likely or normally employed in the manufacture of a controlled substance, as previously discussed, is a "red flag". United States v. Failla, supra; see also United States v. Martin, 509 F.2d 1211 (9th Cir. 1975), cert. den., 421 U.S. 967 (1975); United States v Noreikis, 481 F.2d 1177 (7th Cir. 1973), vacated on other grounds as to one defendant, 415 U.S. 904 (1974); Newcomb v. United States, supra. Individual factors which were presented to other courts and were construed to stereotype the illegal "manufacture" of controlled substances also support the determination of probable cause made here. For example, the factors here of actual participation of an identified drug enforcement agent in actually assisting the loading and delivery of chemical substances or ingredients; United States v. Wallace, 528 F.2d 543, 545 (5th Cir. 1976); the complete covering of windows apparently to conceal manufacturing activities, United States v. Smith, 499 F.2d 251, 254 (7th Cir. 1974); and the ordering of chemical under a fictitious company name, United States v. Moore, 452 F.2d 569, 572

(6th Cir. 1971), cert. den., 407 U.S. 910 (1972). It also supports the inference of manufacture that these chemicals, as even defendants' experts conceded at the hearing were not chemicals for usual household use. United States v. Noreikis, supra, 481 F.2d at 1178.

It is significant that the activities of the defendants were under continued surveillance for days while other information was being collected. Such actual surveillance is itself an important factor because it means much of the information comes first hand to the magistrate. See Mapp v. Warden, N.Y.S. Correctional Institution for Women, _____F.2d _____, Slip Op. 2675, 2679-80 (2d Cir. March 16, 1976); United States v. Soyka, 394 F.2d 443 (2d Cir. 1968) (en banc), cert. den., 393 U.S. 1095 (1969). Lazarski's chemistry background as a technician and the known delivery of at least some of the chemicals to his residence provide further support for the inference of a manufacturing operation. The many telephone calls made by defendants and the known accumulation by Newman of other chemicals which were likely ingredients of methaqualone, besides the large quantity of Anthranilic acid, in my judgment, are clearly subject to a reasonable inference that such manufacturing was taking place. And, as stated at the onset

> the very fact that the Commissioner [magistrate] found probable cause is itself a substantial factor tending to uphold the validity of the warrant he issued. ***
>
> United States v. Ramirez, 279 F.2d 712, 716 (2d Cir. 1960), cert. den., 364 U.S. 850 (1960); see also United States v. Pascente, 387 F.2d 923, 924 (7th Cir. 1967), cert. den., 390 U.S. 1005 (1968).

I find that the magistrate properly found that probable cause existed in the Affidavit and fully supports the application for the search warrant in this case.

Only brief discussion is necessary of the defendants' arguments because they are I think largely "hypertechnical" objections made by chemical experts whose knowledge in this field obviously is very great but hardly related to the practicalities of law enforcement. First, defendants' experts pointed out that Anthranilic acid can be used

for manufacturing substances other than a controlled substance such as paint, dye, etc., which could have been the legal end products of these chemicals possessed by defendants. Second, defendants' experts pointed-up errors in certain chemical names in the Affidavit, the most notable one being "chloryl chloride". The chemist who testified for the government at the hearing and who had been contacted by the agents for scientific advice conceded that he was not aware of any chemical known as "chloryl chloride" but said that he did not use such a drug name in conversations with the DEA agents. He testified he informed the DEA agents who sought his advice that a chemical called "phosphoryl chloride" could be used as an ingredient in methaqualone. See Affidavit, 2. This error was obviously one of a slight variation on a homophonic polysyllabic chemical names attributable to misconception of chemical terms during telephone conversations. It should be regarded as not of major significance to my mind particularly since the agents were receiving their information on the technical chemistry and possible chemical uses of the substances known to be in the possession of defendants as stated largely by telephone. As the Court of Appeals, Second Circuit, observed, such telephonic errors are not uncommon and they should be evaluated in this light.

> these are trifles; we do not read supporting affidavits with the same microscopic intensity as municipal bond counsel would a bond indenture. . . . Dealing by telephone as these agents had to be perforce of circumstances, one cannot always obtain and convey information with the utmost precision.
>
> United States v. Pond, 523 F.2d 210, 214 (2d Cir. 1975); see also United States v. Perry, 380 F.2d 356 (2d Cir. 1967), cert. den., 389 U.S. 943 (1967).

Neither is there any significance in the fact that more of the possible uses of Anthranilic acid were not recited in the Affidavit. Perhaps the use of the word "only" in paragraph 3(g) (2) in a strictly grammatical sense was ill-advised, but nonetheless both legal and illegal uses of Anthranilic acid are mentioned in that paragraph and it thereby gives basis for a proper inference that either legal or

illegal substances could be manufactured. See United States v. Thomas, 489 F.2d 664, 669 (5th Cir. 1973), cert. den., 423 U.S. 844 (1975). As previously stated, probable cause deals in probabilities, not certainties. The facts here, when viewed as a whole or "gestalt" support the magistrate's determination that controlled substances were probably being manufactured at the house in question. The mere fact that one of the chemicals, Anthranilic acid, could be used for paint, etc. and other chemicals known to be possessed by defendants could also have other uses, isolates these facts from other information known by DEA agents after their investigation and continued surveillance and recited in the Affidavit. Such "possibilities" do not detract from the determination of "probable" cause made on the basis of the totality of factors.

In any event, it is my considered judgment after hearing and review that any of the inaccuracies raised by defendants at the most are not material misstatements under the circumstances that should rise to the important level of striking down a search warrant duly issued by a magistrate. United States v. Ponds, supra; United States v. Gonzales, 488 F.2d 833, 837 (1973); United States v. Carmichael, 489 F.2d 983 (7th Cir. 1973)(en banc); see also Kipperman, Inaccurate Search Warrant Affidavits as A Ground for Suppressing Evidence, 84 Harv. L. Rev. 825 (1971).

The separate motions by the defendants to suppress the materials seized pursuant to the search warrant are each denied and dismissed.

It is so Ordered.

Dated: April 29, 1976

Albany, New York

James T. Foley

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

- against - 75-CR-166

PETER N. LAZARSKI, CRAIG L. HEIMAN, NEIL B. WINNER, YOK LEE and MARK McDONALD,

Defendants.

Change of Plea by Neil B. Winner, in the above-entitled matter, came on before the United States District Court, Northern District of New York, Federal Building, Albany, New York, on May 3, 1976, before the Hon. James T. Foley, United States District Judge, presiding.

- - -

BEST COPY AVAILABLE

APPEARANCES:

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- and -

McDERMOTT and GREENSPAN, ESQS., 90 State Street, Albany, New York, Attorneys for Defendant Winner, By: STEPHEN HERRICK, ESQ., of Counsel.

THE COURT: Call the case.

THE CLERK: United States of America vs. Neil B. Winner, 75-CR-166.

THE COURT: State your appearances for the record.

MR. DREYER: William Dreyer, Assistant United States Attorney.

MR. HERRICK: Stephen Herrick, of the firm of McDermott and Cheeseman, on behalf of defendant Neil Winner.

THE COURT: Proceed.

MR. DREYER: On January 5th, 1976, Mr. Winner entered a plea of not guilty to two counts of a two-count indictment No. 75-CR-166.

Mr. Winner is appearing here today with his counsel, Mr. Herrick, in order to enter a change of plea as to Count II of Indictment No. 75-Cr-166.

THE COURT: Mr. Herrick, have you discussed this with Mr. Winner?

MR. HERRICK: Yes, I have discussed it extensively with both Mr. Winner and his family, and at this time, Your Honor, we would make a motion to withdraw our

existing plea of not guilty to the two-count indictment, and in its place, enter a plea of guilty to the second count of the indictment, and pursuant to certain negotiations with the United States prosecutor's office, and the second plea of guilty to the second count would be in full satisfaction of the indictment.

Also, Your Honor, there is mention made by Mr. Dreyer that he would recommend continuation of bail pending appeal of this matter, and that we would preserve the right to appeal, even though Mr. Winner has not had a trial of the issue of his guilt.

Also that Mr. Dreyer would recommend a young adult offender status for Mr. Winner in view of the absence of any previous record, and his age.

MR. DREYER: I would like to hand up to the Court a memorandum of understanding which has been provided to Mr. Winner and his counsel (offering).

There is a third page to that, Your Honor.

THE COURT: The right to appeal

after he pleads guilty, is that by any particular statute?

MR. DREYER: The case law of the Second Circuit had recently decided that a plea of guilty does not stop an appeal of a Fourth Amendment right, and is merely stated that the prosecution should be given the opportunity to object or not object on the record at the time of the plea.

However, in this case, Mr. Winner is entering his plea with the understanding that he may appeal, and so we have no objection.

THE COURT: That is an important understanding, and I am glad that we have it. I don't know of any statute, and is that a nationwide rule?

MR. DREYER: Some circuits have it and some don't, but the Second Circuit has recently adopted that rule.

THE COURT: We will preserve that right, and that has been acclaimed to you, and is agreeable to me.

I am going to ask Mr. Winner, and this will be filed with the clerk, will

it?

MR. DREYER: Yes.

THE COURT: How old are you?

THE DEFENDANT: 24.

THE COURT: And you have heard us speak now and you understand the understanding between your attorney and the government prosecutor?

THE DEFENDANT: Yes, I understand.

THE COURT: And I may have asked you before, but I will ask you again for the record, how much education have you had?

THE DEFENDANT: I have a B.S. Degree in Geology from RPI, and I am currently a graduate student pursuing a Master's on a part-time basis, and working full time for the City of Troy.

THE COURT: Now, I am going to have the clerk read this count II, to you, and you listen to it carefully and then enter your plea.

THE CLERK: The Grand Jury further charges that from on or about December 11th, 1975 until on or about December 19th, 1975, at or near Colonie,

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in the State and Northern District of New York, Peter M. Lazarski, Craig L. Newmar, Neil B. Zinner, Yok Lee, the defendants herein, did willfully, knowingly and unlawfully combine and conspire and confederate and agree together and with each other to commit an offense against the United States, to wit, to violate Title XXI of the United States Code, Section 84151, and it was part of the said conspiracy that the said defendants would knowingly, willfully and unlawfully manufacture and distribute a controlled substance as set forth in Schedule 2 of Subchapter 1 of Title XXI, United States Code, Chapter 13, to wit, a quantity of methaqualone in violation of the law.

That in furtherance of the aforesaid combination, conspiracy and agreement, and to effect the objectives thereof, the defendants at the times and places hereinafter described did do and perform the following overt acts:

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OVERT ACTS

1. That on or about the 11th day of

December, 1975, Craig L. Newman and Yok Lee, conspirators herein, obtained from and at the BASF Wyandotte Corporation, Newark, New Jersey, 2,200 pounds of anthranilic acid and delivered by truck the said anthranilic acid to 209 Wolf Road, Town of Colonie, in the State and Northern District of New York, the said address being a private dwelling rented and occupied by Peter M. Lazarski, a co-conspirator.

2. That on or about the 11th day of December, 1975, Peter M. Lazarski, Craig L. Newman, Neil B. Winner, and Yok Lee, met at Colonie, New York.

3. That from on or about the 11th day of December, 1975, to on or about the 19th day of December, 1975, Mark McDonald, the defendant herein, and Peter M. Lazarski, Craig L. Newman, Neil B. Winner and Yok Lee, co-conspirators, herein, manufactured approximately eighty (80) pounds of methaqualone.

4. That on or about the 19th day of December, 1975, at Colonie, New York, Mark McDonald, the defendant herein, and Peter M.

Lazarski, Craig L. Newman, Neil B. Winner, and Yok Lee, co-conspirators herein, were in possession of eighty (80) pounds of methaqualone.

This is all in violation of Title XXI, United States Code, Section 841.

And how do you plead to this count?

THE DEFENDANT: Guilty.

THE COURT: May I see the indictment, please?

THE CLERK: Yes (offering).

THE COURT: Did he have anything that he wants to say now?

MR. HERRICK: No, Your Honor.

THE COURT: And he pled guilty?

MR. HERRICK: Yes.

THE COURT: And do you stand on that plea of guilty?

THE DEFENDANT: Yes, I do.

THE COURT: Now, this indictment says that you unlawfully and knowingly combined and conspired and confederated with Lazarski, and Newman, and Yok Lee, to violate Title XXI, and did you do that, and that the

purpose of the conspiracy was the manufacture and distribution of a controlled substance and a quantity of methaqualone, in violation of the law?

THE DEFENDANT: Yes.

THE COURT: And I will ask you did you combine and conspire to do that?

THE DEFENDANT: Yes.

THE COURT: That is what we call an overt act, because it doesn't become effective until somebody does something to put it into effect?

THE DEFENDANT: Yes.

THE COURT: That is our law, and it says that on the 11th day of December, 1975, you met at Colonie with Lazarski, Newman and Yok Lee, and is that correct?

THE DEFENDANT: Yes, that is true.

THE COURT: And it says that from about the 11th day of December of 1975 until the 19th day of December, you, with these other people, manufactured approximately 80 pounds, and is that right?

THE DEFENDANT: Yes.

THE COURT: And that you were in possession of that 80 pounds. I want to be clear now, do you admit to all of those charges?

THE DEFENDANT: Yes, I do.

THE COURT: And did you commit those acts that I have asked you about intentionally.

THE DEFENDANT: Yes, I did.

THE COURT: Now, did anybody place any pressure upon you to plead guilty?

THE DEFENDANT: No, no pressure.

THE COURT: Or make you any promises about your possible sentence?

THE DEFENDANT: No promises have been made.

THE COURT: And do you understand that by pleading guilty you waive an important right, the right to have a trial by jury, and the right to be represented by your counsel at a trial, and the right to call witnesses in your behalf, and the right to have the government prove this count, the charges in this count, and the charges in the other counts beyond a reasonable doubt? By

pleading guilty here you waive all of those rights, is that clear to you?

THE DEFENDANT: Yes, I understand that.

THE COURT: Now, what penalties does he face?

MR. DREYER: On Count II, imprisonment for a term of five years, or a fine of $15,000, or both.

And in addition, if imprisonment is adjudged by the Court, special parole term of at least two years. Moreover, because of his age, he is subject to treatment as a young adult offender, and also under that section he may be placed in the custody of the Attorney General for a period of up to six years.

I would repeat that these sentences have been also stated in the letter which has been provided to Mr. Winner.

THE COURT: All right. Is it clear now?

THE DEFENDANT: Yes, it is.

THE COURT: The consequences that you face?

THE DEFENDANT: Yes.

THE COURT: And the statutory penalties that are involved here, and that you face these consequences by pleading guilty?

THE DEFENDANT: Yes, I understand.

THE COURT: And you stand on your plea of guilty?

THE DEFENDANT: Yes, I do.

THE COURT: I will order a presentence investigation, and defer sentence without date, and that means it will be brought on by a notice of the United States Attorney's office.

He is out on bail?

MR. HERRICK: Yes.

THE COURT: And he will now continue on bail until the time of sentence. He should now report to our probation officer.

MR. HERRICK: Thank you.

THE DEFENDANT: Thank you.

(Whereupon, the proceedings in this matter were concluded.)

REPORTER'S CERTIFICATE

I, HIRAM F. SHEFFER, Official Court Reporter, in and for the United States District Court, Northern District of New York York, do certify the foregoing record to be a true and accurate transcription of the proceedings had at the time and place noted in the heading hereof.

Official Court Reporter
U.S. District Court
Northern District

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff-Appelle,

- against - 75-CR-166

PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, YOK LEE and MARK McDONALD,

Defendants.

Change of Plea by Peter M. Lazarski, Craig L. Newman and Yok Lee, came on before the United States District Court, Northern District of New York, Federal Building, Albany, New York, on May 3, 1976, before the Hon. James T. Foley, United States District Judge, presiding.

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A P P E A R A N C E S:

HONORABLE JAMES M. SULLIVAN, JR., United States Attorney, Northern District of New York, Federal Building, Syracuse, New York, Attorney for plaintiff, By: WILLIAM F. DREYER, Assistant United States Attorney, of Counsel;

- and -

E. STEWART JONES, ESQ., Jones Building, 28 Second Street, Troy, New York 12181, Attorney for Defendant Lazarski, By: E. STEWART JONES, JR., ESQ., of Counsel;

SHANLEY and SHANLEY, ESQS., 35 First Street, Troy, New York, 12180, Attorneys for Defendant Newman, By: DONALD J. SHANLEY, ESQ., of Counsel;

DAVID S. MICHAELS, ESQ., 342 Madison Avenue, New York, New York 10017, Attorney for Defendant Lee;

ROSENBLUM and LEVENTHAL, ESQS., 732 Madison Avenue, Albany, New York, Attorneys for Defendant McDonald, By: PAUL KIETZMAN, ESQ., of Counsel.

THE COURT: First I will state for the record that we are getting a late start because I had a busy motion day today.

But, Mr. Dreyer, you should state now where we are here this afternoon.

MR. DREYER: Yes, Your Honor. I have had some discussions with the attorneys representing the persons present and we are going to proceed to dispose of this case by plea, instead of pursuing the hearing. Each of the defendants present have indicated through their attorneys, their desire to enter a plea.

THE COURT: Mr. Jones, is that so?

MR. JONES: That is so. We have had extensive discussions this afternoon, and we wish to enter a change of plea.

THE COURT: Are the clients all here?

MR.DREYER: Yes.

MR. KIETZMAN: Mine is not, but I do intend to recommend the same disposition to this client next evening when I speak to him.

THE COURT: Will that dispose of the need for any further suppression hearings?

MR. DREYER: Yes.

THE COURT: We are all clear on that.

MR. DREYER: There will be certain statements with regard to their right to preserve any matters.

THE COURT: I am glad that they had that right reserved. It is something new in the federal system and I am glad that we had it, and the Second Circuit has written on it, and that right is preserved, and the motion to suppress, in regard to the search warrant?

MR. JONES: Precisely.

MR. DREYER: I suggest that we call the defendants in the order in which they appear in the indictment. This just came in, Your Honor, and we have not prepared a calender. We will prepare one and submit it to the Court.

THE CLERK: United States of America vs. Peter M. Lazarski, 75-CR-166.

MR. DREYER: A plea of not guilty was entered by Mr. Lazarski to two counts of the indictment No. 76-CR-166, on

January 5, 1976, and Mr. Lazarski now intends, through his attorney, to enter a change of plea to Count 2 of that indictment.

THE COURT: Is that the conspiracy count?

MR. JONES: Yes, that is the conspiracy count, and the defendant, Lazarski, desires to change his plea to guilty on Count 2 of the conspiracy count.

THE COURT: And you should state your understanding and what effect this has on the full count, and there are two counts?

MR. DREYER: Yes. It is our understanding, or there has been an understanding reached, that this plea will be in satisfaction of the entire indictment.

THE COURT: Is that in writing?

MR. DREYER: No, we don't have it in writing.

THE COURT: Do you intend to do it?

MR. DREYER: Well, I can dictate it for the record fairly accurately.

THE COURT: Like this morning, with Mr. Winner?

All right, state it.

MR. DREYER: The arrangement, first, is that in exchange for the plea to Count 2, at the time of sentencing, and assuming that the plea is here accepted, Count 2 will be dismissed -- no, Count one will be dismissed upon motion of the United States Attorney.

Additionally, Mr. Lazarski is entering his plea of guilty to Count 2 with the understanding that he is entitled in this circuit, to appeal the ruling of the District Court concerning the suppression of evidence derived from the search warrant.

The United States has no objection to that appeal under the Burke decision.

Now, the third matter concerns --

THE COURT: (Interrupting) Depending on his age, and how old are you?

DEFENDANT LAZARSKI: I just turned 25; March 24th of this year.

MR. DREYER: The third is a young adult offender status. In this particular case, the maximum authorized penalty for a violation of the second count is imprisonment for a term of five years, and a

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fine of $15,000 or both, and if imprisonment is adjudged by the Court, there is a special parole term of at least two years.

Since he is within the young adult offender statute, Mr. Lazarski will be advised at the appropriate time that he would be placed in the custody of the Attorney General for a period of up to six years.

However, we see no reason to treat Mr. Lazarski or the other defendants who have indicated their desire to plead guilty any different than Mr. Winner, who entered a plea of guilty this morning and, therefore, we recommend to the Court, or we will enter a recommendation with Mr. Waterson that Mr. Lazarski be treated as a young adult offender.

THE COURT: That is the important part. You recommend again that he be presented as a young adult offender?

MR. DREYER: Yes.

THE COURT: And Mr. Jones and Mr. Lazarski, that depends on my final judgment in this regard?

MR. JONES: We have discussed that,

and it is with you ultimately.

MR. DREYER: While the appeal is pending, the United States has no objection to Mr. Lazarski being continued on bail, or on his own recognizance, but this again is a matter for the Court as Mr. Lazarski, I believe, understands.

MR. JONES: There is one other matter that I would like to take up, Judge, and I believe that this has been discussed with Mr. Dreyer. In the event of a reversal of this Court's decision on the search warrant, the matter will be sent back here, of course, and we would like to preserve, and ask to preserve at this time a right to continue with any motions in the event that this case, and this indictment becomes viable again as a result of the reversal of the Court's decision with respect to the search warrant, that is, the Second Circuit Court of Appeals.

THE COURT: You have those rights, and it would have a great impact, I am sure, on the problem of the search warrant.

MR. JONES: I think so.

MR. DREYER: To state it another

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way, the United States has no objection to that arrangement, although it doesn't foresee the possibility of proceeding to trial if the search warrant were overruled.

But if the United States, either this attorney or another Assistant United States Attorney did take over the case and decided that there was a way to prosecute a case, we will state now that there is no objection to reviving these other motions for suppression.

THE COURT: I think that we're all clear on that. So, you did talk this over?

MR. JONES: For the record, Mr. Lazarski is not only present in court but his mother and father are present in court, and they have been a party to all of the discussions with respect to the plea negotiations that have taken place this afternoon, and stand behind their son in his decision to plead guilty here today to the second count of this indictment.

THE COURT: All right. And, Mr. Lazarski, you are here now, and what do

you want to say?

DEFENDANT LAZARSKI: Yes, sir.

THE COURT: You have talked it over with Mr. Jones, to your satisfaction?

DEFENDANT LAZARSKI: Yes, sir, your Honor, I have.

THE COURT: We are going to read now this count in which you are going to plead, and that is Count 2.

"The Grand Jury further charges that from on or about December 11, 1975, until on or about December 19, 1975, at or near Colonie, in the State and Northern District of New York, Peter M. Lazarski, Craig L. Newman, Neil B. Winner and Yok Lee, the defendants herein, did wilfully, knowingly and unlawfully combine, conspire, confederate and agree together and with each other, to commit an offense against the United States, to wit: To violate Title 21, United States Code, Section 891(a)(1).

It was part of the said conspiracy that the said defendants would knowingly, wilfully and unlawfully manufacture and distribute a controlled substance

as set forth in Schedule 2 of Subchapter I of Title 21, United States Code, Chapter 13, to wit: A quantity of methaqualone, in violation of the law.

"That in furtherance of the aforesaid combination, conspiracy and agreement and to effect the objectives thereof, the defendants at the times and places hereinafter described did do and perform the following overt acts:

"1. That on or about the 11th day of December, 1975, Craig L. Newman and Yok Lee, defendants herein, obtained from and at the BASF Wyandotte Corporation, Newark, New Jersey, 2,200 pounds of anthranilic acid and delivered by truck the said anthranilic acid to 209 Wolf Road, Town of Colonie, in the State and Northern District of New York, the said address being a private dwelling rented and occupied by Peter M. Lazarski, a defendant herein.

"2. That on or about the 11th day of December, 1975, Peter M. Lazarski, Craig L. Newman, Neil B. Winner, and Yok Lee, met at Colonie, New York.

"3. That from on or about the 11th day of December, 1975, to on or about the 19th day of December, 1975, Peter M. Lazarski, Craig L. Newman, Neil B. Winner and Yok Lee, the defendants herein, manufactured approximately eighty (80) pounds of methaqualone.

"4. That on or about the 19th day of December, 1975, at Colonie, New York, Peter M. Lazarski, Craig L. Newman, Neil B. Winner and Yok Lee, the defendants herein, were in possession of eighty (80) pounds of methaqualone.

In violation of Title 21, United States Code, Section 846.

And how do you plead to this count, Mr. Lazarski?

DEFENDANT LAZARSKI: I plead guilty.

THE COURT: I didn't ask you previously, but I will ask you again: What is your education?

DEFENDANT LAZARSKI: I have a BS in chemistry from Rensselaer Polytechnic Institute. I graduated in June, 1974.

THE COURT: Is it clear now what was read to you, and do you understand the charge that was just read to you?

DEFENDANT LAZARSKI: Yes, your Honor.

THE COURT: Let me see the indictment.

THE CLERK: Yes (offering).

THE COURT: It is stated that you combined, and sonspired and confederated and agreed with Newman and Winner and Yok Lee to commit this offense, and the offense is the manufacture to distribute this quantity of methaqualone in violation of the law.

Did you commit those acts?

DEFENDANT LAZARSKI: Yes, your Honor, I did.

THE COURT: And then you are named in an overt act as being the defendant, and this cannot be effected until somebody does something to put it into effect, and I am going to ask you now if you did participate in those acts on December 11th, 1975, and you with Newman and Winner and Yok

Lee, at Colonie, New York, and you met with them?

DEFENDANT LAZARSKI: Yes.

THE COURT: And did you do that intentionally?

DEFENDANT LAZARSKI: Yes, your Honor.

THE COURT: And other overt acts named there from on or about the 11th day of December, 1975, on or about the 11th day of December, 1975 and you and these three other persons that I named, manufactured approximately eighty pounds of methaqualone, is that right?

DEFENDANT LAZARSKI: Yes, your Honor.

THE COURT: And also again on December 19th, that you were in possession of eighty pounds of methaqualone?

DEFENDANT LAZARSKI: Yes, your Honor.

THE COURT: And did you commit those acts?

DEFENDANT LAZARSKI: Yes, your Honor.

THE COURT: And did you commit them intentionally?

DEFENDANT LAZARSKI: Yes, your Honor.

THE COURT: Any pressure put on you in any way to plead guilty here today?

DEFENDANT LAZARSKI: No, your Honor.

THE COURT: Or make any promises about your possible sentence?

DEFENDANT LAZARSKI: No, your Honor.

THE COURT: Now, did you understand, outside of preserving your right to appeal, that by pleading guilty here, you waive your right to a trial by jury, you waive your right to have the prosecution prove each count of this charge against you, and that is Count 1 and 2, by proof beyond a reasonable doubt, and you waive your right to call witnesses in your own behalf, and have your defense put forward by Mr. Jones, and do you understand that you waive all of those rights?

DEFENDANT LAZARSKI: Yes.

THE COURT: That is important?

DEFENDANT LAZARSKI: Yes.

THE COURT: And is that clear to you?

DEFENDANT LAZARSKI: Yes, your Honor.

THE COURT: And I think that we did have some statement, but we should have it again about what penalty does he face?

MR. DREYER: The maximum statutory penalty is imprisonment for a term of five years, or a $15,000 fine, or both.

In the event of imprisonment by the court, the statutory parole term of at least two years, and because of his age he is subject to treatment as a young adult offender, and could be placed in the custody of the Attorney General for a period of up to six years.

THE COURT: Do you understand now that you face all of these consequences on a plea of guilty?

DEFENDANT LAZARSKI: Yes, your Honor.

THE COURT: Will you still stand on your plea of guilty?

DEFENDANT LAZARSKI: Yes, your Honor, I do.

THE COURT: I will order a pre-setence investigation, and confer sentence without date, and that means it will be brought on by a notice of the United States Attorney's office, and I guess that our understanding is that he should be continued on his own recognizance?

MR. DREYER: Yes.

MR. JONES: He is on bail, and I just asked that it be continued.

THE COURT: I will continue him on bail until the time of sentence, and he should report as soon as he can to the Probation Officer.

MR. JONES: I will take him down there right now.

MR. DREYER: Thank you.

MR. JONES: Thank you.

DEFENDANT LAZARSKI: Thank you.

THE COURT: Call the next defendant.

THE CLERK: United States of America vs. Craig L. Newman, 75-CR-166.

MR. SHANLEY: I am here for defendant Newman.

THE COURT: You should make a statement next now about your understanding.

MR. DREYER: First of all, Mr. Newman entered a plea of not guilty on two counts of the indictment 75-CR-166 on January 5th, 1976, and he is appearing here today with his attorney, Mr. Donald Shanley, in order to enter a change of plea as to Count 2 of that indictment.

The government has agreed with Mr. Shanley, and with the defendant, that the plea to Count 2 is in satisfaction of the entire indictment, that is, at the time of sentencing, assuming that the Court accepts the plea, that the United States will move the Court to dismiss Count 1 of the indictment.

Moreoever, the United States has no objection to Mr. Newman appealing the decision of the United States District Court concerning suppression of evidence derived from a search warrant at 209 Wolf

Road, and we have no objection to Mr. Newman's being continued on bail pending the processing of thi appeal.

Although Mr. Newman has been advised by his attorney that the question of bail is a matter for the Court.

MR. SHANLEY: Yes, the same rights.

THE COURT: How old are you?

DEFENDANT NEWMAN: I was 25 last January.

THE COURT: 25.

MR. DREYER: Now, in regard to the sentencing, Mr. Newman has been advised that the maximum authorized penalty on Count 2 is imprisonment for a term of five years, a fine of $15,000, or both, and if imprisonment is adjudged by the Court, there shall be a special parole term of at least two years, and because of his age, he is subject to treatment as a young adult offender, which could place him in the custody of the Attorney General for a period of up to six years.

Based on certain negotiations with the defense counsel the United States will

recommend, through the Probation and Parole Office, that Mr. Newman be treated as a young adult offender.

Finally, in the event that the Court of Appeals reverses the decision of the District Court, and the United States, either through this attorney or through another attorney who may take over the case, perceives some way in which the case can be continued, Mr. Shanley and the government have agreed that Mr. Newman preserves all of his rights to bring on any other motions concerning matters not heretofore litigated, such as the question of the legality of arrest, and any statements, et cetera.

THE COURT: Is that your understanding, Mr. Shanley?

MR. SHANLEY: Yes, it is, your Honor.

THE COURT: And are you satisfied with the statement that was made concerning your agreement?

MR. SHANLEY: Yes, I am satisfied.

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THE COURT: I think I did ask you previously, but I will ask you again, Mr.

Newman: Tell us again now for the record what your educational background is.

DEFENDANT NEWMAN: I have a BS Science Degree in Geology from Rensselaer Polytechnic Institute.

THE COURT: All right.

You did discuss, now, what you were going to do, and you expected to do now here in regard to the plea, and the clerk is now going to read this Count 2, to you, and you listen to it carefully.

THE CLERK: "The Grand Jury further charges: that from on or about December 11th, 1975, until on or about December 19th, 1975, at or near Colonie, in the State and Northern District of New York, Peter M. Lazarski, Craig L. Newman, Neil B. Winner and Yok Lee, the defendants herein, did wilfully, knowingly and unlawfully combine, conspire, confederate and agree together and with each other, to commit an offense against the United States, to wit: To violate Title 21, United States Code, Section 841(a)(1).

"It was part of the said conspiracy that the said defendants would

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knowingly, wilfully, and unlawfully manufacture and distribute a controlled substance as set forth in Schedule II of Subchapter I of Title 21, United States Code, Chapter 13, to wit: A quantity of methaqualone, in violation of the law.

"That in furtherance of the aforesaid combination, conspiracy and agreement and to effect the objectives thereof, the defendants at the times and places hereinafter described did do and perform the following overt acts:

"1. That on or about the 11th day of December, 1975, Craig L. Newman and Yok Lee, defendants herein, obtained from and at the BASF Wyandotte Corporation, Newark, New Jersey, 2,200 pounds of anthranilic acid and delivered by truck the said anthranilic acid to 209 Wolf Road, Town of Colonie, in the State and Northern District of New York, the said address being a private dwelling rented and occupied by Peter M. Lazarski, a defendant herein.

"2. That on or about the 11th day of December, 1975, Peter M. Lazarski,

Craig L. Newman, Neil B. Winner and Yok Lee, met at Colonie, New York.

"B. That from on or about the 11th day of December, 1975, to on or about the 19th day of December, 1975, Peter M. Lazarski, Craig L. Newman, Neil B. Winner and Yok Lee, the defendants herein, manufactured approximately eighty (80) pounds of methaqualone.

"C. That on or about the 19th day of December, 1975, at Colonie, New York, Peter M. Lazarski, Craig L. Newman, Neil B. Winner and Yok Lee, the defendants herein, were in possession of eighty (80) pounds of methaqualone."

In violation of Title 21, United States Code, Section 846.

And how do you plead to this count?

DEFENDANT NEWMAN: Guilty.

THE COURT: Give me the indictment.

THE COURT: Mr. Newman, did you understand that charge now that was just read to you?

DEFENDANT NEWMAN: Yes, sir.

THE COURT: And did you combine and conspire and confederate and agree with Lazarski, Minner and Yok Lee, and violate this section of the law by manufacturing and distributing this controlled substance?

DEFENDANT NEWMAN: Yes, sir.

THE COURT: This quantity of methaqualone, I guess was in the amount of 80 pounds. I do not know whether you have any amount in the conspiracy, but was that something that you did?

DEFENDANT NEWMAN: Yes, sir.

THE COURT: And did you do it intentionally?

DEFENDANT NEWMAN: Yes, your Honor.

THE COURT: Now, you are also named here in overt acts, and that you and Yok Lee, on the 11th day of December, obtained 2200 pounds of anthranilic acid, and delivered it by truck from New Jersey to the Town of Colonie, and that you brought it to a dwelling occupied and rented by Peter M. Lazarski, and did you so commit that overt act?

DEFENDANT NEWMAN: Yes, your Honor.

THE COURT: And again, on December 11th, you are named that you had a meeting in Colonie with Lazarski, and Winner and Yok Lee, and did that occur?

DEFENDANT NEWMAN: Yes, sir.

THE COURT: And was it intentional?

DEFENDANT NEWMAN: Yes, sir.

THE COURT: And from the 11th day of December, to on or about the 19th day of December did you and Lazarski and Winner and Yok Lee manufacture 80 pounds of methaqualone, and that you were in possession on the 19th of December of 80 pounds of that controlled substance, and did those acts occur on your part?

DEFENDANT NEWMAN: Yes, your Honor.

THE COURT: And were you acts intentional?

DEFENDANT NEWMAN: Yes.

THE COURT: Did anybody pressure you to plead guilty here?

DEFENDANT NEWMAN: No.

THE COURT: In any way?

DEFENDANT NEWMAN: No.

THE COURT: Or make any promises about your possible sentence?

DEFENDANT NEWMAN: No, your Honor.

THE COURT: And did you understand now about pleading guilty and you waive important rights? Your right to have a trial by jury, your right to have the United States attorney prove each of these counts against you, by proof beyond a reasonable doubt, and your right to call witnesses in your own defense, and be represented at the trial by Mr. Shanley, and do you waive all of those rights, and is that fair to you?

DEFENDANT NEWMAN: Yes.

THE COURT: Now, what sentence, again, does he face?

MR. DREYER: A maximum statutory penalty is a term of imprisonment for five years, and a fine of $15,000 or both, and if imprisonment is adjudged by the Court, a special parole term of at least two years, and because of his age he is subject to treatment as a young adult offender, and under Section 134209, would be placed in the custody of the Attorney General for a

period of up to six years.

THE COURT: Then, the young adult offender under the Federal Youth Corrections Act, we have a recommendation that will be given by the United States attorney, and the Probation Officer will talk to you about it, too, Mr. Shanley, but finally my judgment is to determine whether I should give him that status as a young adult offender.

MR. SHANLEY: Yes, your Honor.

THE COURT: So facing those statutory penalties now, and you heard them discussed, do you stand on your plea of guilty?

DEFENDANT NEWMAN: Yes, your Honor.

THE COURT: I will offer a pre-sentence investigation, and defer sentence without date, and it will be brought on by a notice of the United States Attorney's office, and is he out on bail?

MR. SHANLEY: Yes.

THE COURT: I will continue him on bail until his time of sentence. He should also report to our Probation Department.

MR. SHANLEY: Thank you, your Honor.

THE COURT: Call the next one.

THE CLERK: United States of America vs. Yok Lee, 75-CR-166.

MR. DREYER: Mr. Lee entered a plea of not guilty to two counts of a two-count indictment, No. 75-CR-166 on January 5th, 1976.

Mr. Yok Lee is appearing here with an attorney today, Mr. David Michaels, in order to enter a change of plea as to Count 2 of indictment No. 75-CR-166.

An understanding has been reached between the United States attorney and Mr. Michaels that the plea to Count 2 will be made in satisfaction of the entire indictment. That is, if the plea is accepted to Count 2, that on sentencing of the defendant, the United States will move the Court to dismiss Count 2 of the same indictment.

Additionally, we have been advised that Mr. Lee entered his plea of guilty upon the understanding that he is entitled to appeal the decision of the United States District

Court to the Second Circuit Court of Appeals concerning the execution of the search warrant, and the issue of every probable cause, and also, that the United States will not oppose Mr. Lee being released on bail during the pendency of that particular appeal.

Mr. Lee has been advised that the question of bail is a matter for the Court, and not for the United States attorney.

MR. Lee's attorney has been advised that in the event that the Court of Appeals rules that the search warrant is invalid, and if the United States attorney in this district perceives the possibility of pursuing the trial against either Mr. Lee, or any of the other named defendants, that Mr. Lee will preserve his right to litigate those matters arising under the Fourth Amendment, or other amendments which have not heretofore been litigated.

Finally, as to sentencing, Mr. Lee has been advised through his attorney that the maximum authorized penalty in this case is a term of imprisonment for five years and a fine of $15,000, or both.

Additionally, if imprisonment is adjuged by the Court, a special parole term of at least two years shall be adjudged.

I believe that because of Mr. Lee's age, he is within the young adult offender statute.

THE COURT: How old are you?

DEFENDANT LEE: I am 24.

MR. DREYER: Accordingly, because of that statute, the United States attorney recommends treating of Mr. Lee as all of the other defendants in this case and we will recommend through the Probation and Parole Department that Mr. Lee be treated as a young adult offender. However, he has been advised that this particular treatment of him is a matter for the Court, and not for the United States attorney.

I think that that covers the agreement.

THE COURT: Mr. Michaels, does that cover your understanding, now?

MR. MICHAELS: Yes, your Honor. But I would wish to note for the record any appeal in this matter be concerned not only

with the execution of the search warrant, but the propriety of the initial warrant.

MR. DREYER: That is what I meant to say.

MR. MICHAELS: I think it was a misstatement.

THE COURT: I think it will be an appeal from my denial of the motion to suppress.

MR. MICHAELS: I did not want to put it in those words but, yes, that is the situation.

THE COURT: It is a fact of life.

That appeal will cover your entire motion, as I understand it?

MR. MICHAELS: Yes, that was our intention.

MR. DREYER: That is correct.

THE COURT: I have many appeals, and they don't bother me. But you can talk it over now, with Mr. Lee, and have a full discussion with him.

MR. MICHAELS: I believe so, your Honor.

THE COURT: And, Mr. Lee, are you

satisfied, now, with your discussion with your attorney?

DEFENDANT LEE: Yes, we have had extensive discussions on the point.

THE COURT: I am going to have the clerk read to you now this charge in Count 2, and you listen to the charge carefully, and then you enter your plea.

THE CLERK: "The Grand Jury charges: That from on or about December 11, 1975, until on or about December 19, 1975, at or near Colonie, in the State and Northern District of New York, Peter M. Lazarski, Craig L. Newman, Neil B. Winner and Yok Lee, the defendants herein, did willfully, knowingly and unlawfully combine, conspire, confederate and agree together and with each other, to commit an offense against the United States, to wit: To violate Title 21, United States Code, Section 841(a)(1).

"It was part of the said conspiracy that the said defendants would knowingly, willfully, and unlawfully manufacture and distribute a controlled substance as set forth in Schedule II of

Subchapter I of Title 21, United States Code, Chapter 13, to wit: A quantity of methaqualone, in violation of the law.

"That in furtherance of the aforesaid combination, conspiracy and agreement and to effect the objectives thereof, the defendants at the times and places hereinafter described did do and perform the following overt acts:

"1. That on or about the 11th day of December, 1975, Craig L. Newman, and Yok Lee, defendants herein, obtained from and at the BASF Wyandotte Corporation, Newark, New Jersey, 2,200 pounds of anthranilic acid and delivered by truck the said anthranilic acid to 209 Wolf Road, Town of Colonie, in the State and Northern District of New York, the said address being a private dwelling rented and occupied by Peter M. Lazarski, a defendant herein.

"2. That on or about the 11th day of December, 1975, Peter M. Lazarski, Craig L. Newman, Neil B. Winner and Yok Lee, met at Colonie, New York.

"3. That on or about the 11th

day of December, 1975, to on or about the 19th day of December, 1975, Peter M. Lazarski, Craig L. Newman, Neil B. Winner, and Yok Lee, the defendants herein, manufactured approximately eighty(80) pounds of methaqualone.

"4. That on or about the 19th day of December, 1975, at Colonie, New York, Peter M. Lazarski, Craig L. Newman, Neil B. Winner and Yok Lee, the defendants herein, were in possession of eighty (80) pounds of methaqualone.

In violation of Title 21, United States Code, Section 846.

And, Mr. Lee, how do you plead to this count?

DEFENDANT LEE: I plead guilty.

THE COURT: All right, Mr. Lee, did you understand now those charges that were just read to you?

DEFENDANT LEE: Yes, your Honor.

THE COURT: And I am going to ask you: Did you unlawfully combine and conspire and confederate with Lazarski and Newman and Winner to commit this offense in violation of Title 21, United States Code,

and that was to unlawfully manufacture and distribute a controlled substance, a quantity of methaqualone, and did you so agree, and conspire among each other?

DEFENDANT LEE: Yes, your Honor.

THE COURT: And as I told the other defendants, now, the conspiracy, of course, has to be put into effect by some overt act, and you are named here in several of them.

I am going to ask you: Did you, on December 11th, 1975, with Newman, drive from Newark, New Jersey, or in a truck coming from Newark, New Jersey, to the Town of Colonie, and did you obtain in Newark, New Jersey, 2200 pounds of anthranilic acid and were you bringing it to a private dwelling that is rented and occupied by Lazarski, and did you commit that act?

DEFENDANT LEE: Yes.

THE COURT: And did you commit it intentionally?

DEFENDANT LEE: Yes.

THE COURT: And again, you are further named that on the 11th day of

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December, with Lazarski, Newman, and Winner, that you did meet at Colonie on that date, is that correct?

DEFENDANT LEE: That is correct.

THE COURT: And did you not meet, and was it intentional?

DEFENDANT LEE: Yes, your Honor.

THE COURT: And that from on or about the 11th day of December, to on or about the 19th day of December, 1975, that you, Lazarski and Newman and Winner manufactured approximately eighty pounds of methaqualone, and that you had it in your possession, the possession of these defendants on or about the 19th day of December, 1975, and did those incidents occur?

DEFENDANT LEE: Yes, your Honor.

THE COURT: And were you involved with them?

DEFENDANT LEE: Yes, your Honor.

THE COURT: And was it intentional?

DEFENDANT LEE: Yes, your Honor.

THE COURT: Now, again, I will ask you: Did anybody coerce you or pressure

you to plead guilty here?

DEFENDANT LEE: No, your Honor.

THE COURT: Or make any promises about your possible sentence?

DEFENDANT LEE: No, your Honor.

THE COURT: And do you understand that it is important for you to know that by pleading guilty here you waive your right to a trial by jury, your right to have the government prove these two charges in each of the counts, beyond a reasonable doubt, and your right to call witnesses in your own defense, and your right to be represented here by your attorney at a trial, and to do that, you waive those rights, and is that clear to you?

DEFENDANT LEE: Yes, sir.

THE COURT: And what does he face?

MR. DREYER: Statutory penalty is a maximum imprisonment of five years, and a fine of $15,000, or both. And if imprisonment is adjudged, a special parole term of at least two years.

Because of his age, he is

subject to treatment as a young adult offender, and can be placed in the custody of the Attorney General for a period of up to six years.

THE COURT: Do you understand that you face all of those statutory penalties, by pleading guilty here?

DEFENDANT LEE: Yes, your Honor.

THE COURT: And you stand on your plea of guilty?

DEFENDANT LEE: I stand on my plea of guilty.

THE COURT: I will order a pre-sentence investigation, and defer sentence without date, and that means it will be brought on, your date of sentence, by a notice from the United States Attorney's office. Are you on bail?

MR. MICHAELS: Yes.

THE COURT: I will continue him on the same bail until the time of sentence, and he should now report to our Probation Office.

MR. MICHAELS: Your Honor, I ask as to the same bail: Let us note for the

record that the Court signed an order modifying terms of bail in the past. That modification has not yet been put into effect. So we assume that by the determination that the same bail is to continue, that that is to be the amount determined by the Court in the order modifying the bail, although the change has not been fully effected?

THE COURT: That is right. As long as I granted the modification it will be under that modified bail that he will be released until the time of sentence.

MR. MICHAELS: Thank you.

MR. DREYER: Thank you.

THE COURT: You should now report to our Probation Officer.

MR.DREYER: That disposes of that one.

THE COURT: Mr. Kietzman, what about your client?

MR. KIETZMAN: As far as Mr. McDonald --

THE COURT: (Interrupting) When will you have him available?

MR. KIETZMAN: As I have

indicated before, I will try and have him here tomorrow afternoon, if that is a good time for the Court to hear the change of plea?

THE COURT: We are going to have a Grand Jury tomorrow, and I think we are talking about Wednesday. It will be their final report. Let's put it on about the same time on that date. I don't think that the one day will make any great difference.

MR. DREYER: No.

MR. KIETZMAN: You prefer Wednesday?

THE COURT: Yes. We will have a court reporter here because there is a session on at Auburn tomorrow. What time do you want it?

MR. KIETZMAN: Any time at all, your Honor.

It might be helpful to give him a little time to get here in the morning. He will be coming from Long Island, I believe, your Honor.

THE COURT: What time does the Grand Jury report?

MR. DREYER: In the morning, before

noon.

THE COURT: We will hear this at one thirty.

MR. DREYER: Thank you.

MR. KIETZMAN: I would suggest, at this time, that the hearing, since I am not authorized to enter a plea on his behalf or waive any rights, that we merely adjourn the hearing in this matter until then, at which time, assuming that he does follow my recommendation, the necessity for the hearing would be obviated, and if he does not follow my recommendation, or if we decide on continuing the prosecution, we could then select a date that is mutually convenient for a continuation of the hearing?

THE COURT: I will adjourn that to the same time, on Wednesday.

MR. DREYER: Thank you.

THE COURT: That will be May 5th, at 1:30.

MR. DREYER: Thank you, your Honor.

MR. KIETZMAN: Thank you, your Honor.

THE CLERK: Court stands in recess.

* * *

REPORTER'S CERTIFICATE

I, HIRAM F. SHEFFER, Official Court Reporter, in and for the United States District Court, Northern District of New York, do certify the foregoing record to be a true and accurate transcription of the proceedings had at the time and place noted in the heading hereof.

Official Court Reporter
U.S. District Court
Northern District

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

76-CR-15
CHANGE OF PLEA

MARK McDONALD,

Defendant.

TRANSCRIPT OF PROCEEDINGS in the above-entitled matter held on the 5th day of May 1976 before Hon. James T. Foley, Chief United States District Judge for The Northern District of New York at the Federal Building, Albany, New York.

APPEARANCES:

JAMES M. SULLIVAN, JR.,
United States Attorney for the
Northern District of New York,
BY: WILLIAM DREYER,
Assistant United States Attorney.

PAUL KIETZMAN,
Albany, New York,
Attorney for Defendant.

THE COURT: All right, call the case.

THE CLERK: The United States of America versus Mark McDonald, 76-CR-15.

THE COURT: All right, Mr. Dreyer.

MR. DREYER: Your Honor, Indictment Number 76-CR-15 was filed in Albany, New York on February 4th, 1976, and on February 13th, 1976, Mr. McDonald entered a plea of not guilty to the two counts therein. He is appearing here today in order to enter a change of plea as to count two of that indictment.

THE COURT: Mr. Kietzman, that is your understanding now?

MR. KIETZMAN: Yes, Your Honor. Pursuant to negotiations between Mr. Dreyer and myself the defendant at this time seeks leave of the Court to withdraw his plea of not guilty to count two of this indictment charging conspiracy and substituting a plea of guilty pursuant to understandings we will set forth for the record.

MR. DREYER: I am prepared to set those forth now for the Court.

THE COURT: I think you should set forth what you have and your agreement.

MR. DREYER: First of all, Your Honor, the Government agrees that upon the acceptance by this Court of a plea of guilty to count two and at the time of sentencing, the United States will move the Court to dismiss count one of Indictment 76-CR-15. In other words, the plea of guilty to count two is in satisfaction of the indictment.

THE COURT: What is the indictment?

MR. DREYER: We are dealing with 76-CR-15.

THE COURT: What is the one that will be dismissed?

MR. DREYER: Count one of that indictment. He is not named in the first indictment.

THE COURT: Oh, I see, all right.

MR. DREYER: Secondly, Mr. McDonald is entering his plea of guilty to count two with the understanding that he may appeal to the Circuit Court of Appeals the ruling of the United States District Court in which the search warrant was upheld by the United States Court.

THE COURT: The denial of the motion to suppress?

MR. DREYER: Right. He is entering his plea with the understanding that he may appeal that ruling, and the United States, for the record, has no objection to that stand by Mr. McDonald.

THE COURT: Under case law of the Court of Appeals, that is permissible.

MR. DREYER: That is permissible, and the case is United States against Burke, and I will provide the Court with the citation.

THE COURT: I would like to have that citation. That is something in your favor as far as I am concerned. That right is preserved to raise the question on appeal concerning the denial of the motion to suppress.

MR. DREYER: Right. Thirdly, the Government has no objection to Mr. McDonald being continued on bail pending the appeal of that issue to the United States Court of Appeals, and Mr. McDonald has been advised through his attorney that the issue of bail, of course, rests with the Court and not with the United States attorney. However, it is the position of the Government that we have no objection to that continuation.

THE COURT: I ordinarily grant bail in most instances pending appeal. Do we have

that consideration in the other four defendants?

MR. DREYER: Yes.

THE COURT: All right.

MR. DREYER: Also, Your Honor, Mr. McDonald has been advised through Mr. Kietzman that the maximum authorized penalty in this case is a term of imprisonment for five years, a fine of fifteen thousand dollars or both, and if imprisonment is adjudged by the Court, there shall be imposed a special parole term of at least two years. Because of Mr. McDonald's age, he is eligible for treatment as a young adult offender.

THE COURT: Do you recommend it?

MR. DREYER: Well, we recommend to the Department of Probation and Parole that he should be considered for treatment as a young adult offender.

THE COURT: Mr. Kietzman, you do realize, of course, that you have that recommendation which is helpful to your interests, but also that I have to make the final decision.

MR. KIETZMAN: Yes, that is clear to me, and I believe I have made it clear to the defendant.

THE COURT: I am going to ask you

now, Mr. McDonald, how old are you?

THE DEFENDANT: Twenty-four.

MR. KIETZMAN: Could I interrupt you for a second? There was one further understanding that I think we had that corresponds with the understanding that was given to the other defendants, that being that there will be a preservation of the defendant's further Fourth Amendment rights which have yet to be litigated should there be a reversal in the Circuit Court of Appeals, and I would request that that preservation of rights include the right to preserve his objection to a certain photographic identification which took place which is not, strictly speaking, a Fourth Amendment right, but it partakes of the same nature, I think.

THE COURT: I will allow all those rights to be reserved. And do you consent to that reservation?

MR. DREYER: Yes.

THE COURT: That's right, we did have that too in the other case.

I am going to ask you now, Mr. McDonald, how much education have you had?

THE DEFENDANT: I have a master's

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degree.

THE COURT: All right. The clerk will now read count one. And I assume you have talked it over with your attorney. And you listen to it carefully and then enter your plea.

THE CLERK: The Grand Jury further charges that from on or about December 11th, 1975 until on or about December 19th, 1975 at or near Colonie in the State and Northern District of New York, Mark McDonald, defendant herein, and Peter M. Lazarski, Craig L. Newman, Neil B. Winner and Yok Lee, co-conspirators not charged as the defendants herein, did willfully, knowingly and unlawfully combine, conspire co, confederate and agree together and with each other to commit an offense against the United States, to wit: To violate Title 21 United States Code, Section 841,A(1). It was part of the said conspiracy that the said defendants would knowingly, willfully and unlawfully manufacture and distribute a controlled substance as set forth in Schedule 2 of Subchapter 1, Title 21, United States Code, Chapter 13, to wit: A quantity of meth alone in violation of law, that in furtherance of aforesaid combination, conspiracy and agreement, and to effect the objectives thereof,

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U.S. COURT REPORTERS
FEDERAL BUILDING
ALBANY, N.Y.

the defendants at the times and places hereinafter described, did do and perform the following overt acts, that from on or about the 11th day of December 1975 to on or about the 19th day of December 1975, Mark McDonald, the defendant herein, and Peter M. Lazarski, Craig L. Newman, Neil B. Winner and Yok Lee, co-conspirators herein, manufactured approximately eighty pounds of methaqualone, that on or about the 19th day of December 1975 at Colonie, New York, Mark McDonald, the defendant herein, and Peter M. Lazarski, Craig L. Newman, Neil B. Winner and Yok Lee, co-conspirators herein, were in possession of eighty pounds of methaqualone in violation of Title 21, United States Code, Section 846.

And Mark McDonald, how do you plead?

THE DEFENDANT: Guilty.

THE COURT: All right, Mr. McDonald, now, did you understand that charge as it was read to you?

THE DEFENDANT: Yes, sir.

THE COURT: And I will ask you now, did you combine, conspire, confederate and agree with Lazarski, Newman, Winner and Yok Lee

to commit this offense against a certain Title 21, United States Code, manufacturing and distributing intentionally, a quantity of methaqualone in violation of law? Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Did you do those things?

THE DEFENDANT: Yes.

THE COURT: Did you do it intentionally?

THE DEFENDANT: Yes.

THE COURT: Now, you are named here, of course, in an overt act. A conspiracy cannot be effective until it is started by some act of a human being, and you are named here in number four -- is that the first one?

THE CLERK: Three.

THE COURT: And I will read it to you. That from on or about the 11th day of December 1975 until on or about the 19th day of December 1975, Mark McDonald, the defendant, and Peter M. Lazarski, Craig Newman, Neil Winner and Yok Lee herein manufactured approximately eighty pounds of methaqualone. That is from on or about that day of December 11th to on or about the 19th

day of December 1975. Did you so act and do that?

THE DEFENDANT: Yes, I did.

THE COURT: Did you do that?

THE DEFENDANT: Yes.

THE COURT: With the others?

THE DEFENDANT: Yes.

MR. KIETZMAN: Your Honor, if I may say something, pursuant to the conversations with the defendant, we did review the factual basis of this plea, and the only portion of the indictment with which we would take any issue is to the amount of the methaqualone involved. We believe it to have been much less. But that neither changes the character or degree of the offense, although it might have some bearing upon the severity of punishment.

THE COURT: It might indeed. Did you explain that to the Probation Department?

MR. KIETZMAN: I would not want him to make those admissions in open Court and say something contrary to Mr. Waterson.

THE COURT: All right. You are also named that on or about the 19th of December 1975 at Colonie, you, Peter Lazarski, Newman, Winner and Yok Lee were in possession of eighty

pounds of methaqualone. Now, it says eighty pounds. I will leave it up to you. Do you have any idea how much it was?

THE DEFENDANT: No, not exactly.

THE COURT: Was it in that area?

THE DEFENDANT: It could be as little as half that amount. I am not sure. I read some of the data that the chemist that works for the Government supplied to the Court, and I am not very sure exactly, but it could be as little --

THE COURT: You have your degree. I just want you to state yourself for me what you approximate the amount was. It is not necessary that you be --

THE DEFENDANT: Fifty, forty-five or fifty.

THE COURT: All right But you did have it in your possession, at least?

THE DEFENDANT: Yes.

THE COURT: A substantial amount?

THE DEFENDANT: Yes.

THE COURT: Of methaqualone?

THE DEFENDANT: Yes, I did.

THE COURT: I am going to ask you now, and this is important, did anybody coerce you

or pressure you in any way to plead guilty here?

THE DEFENDANT: No.

THE COURT: Or make any promises about your possible sentence?

THE DEFENDANT: No.

THE COURT: Do you understand now that by pleading guilty here you waive very important rights, the right to have a trial by jury, the right to have the Government prove this charge and the charge in the other count by evidence beyond a reasonable doubt, your right to call witnesses in your own defense, to be represented by your attorney, Mr. Kietzman? By pleading guilty, you waive those rights that you have. Do you understand that?

THE DEFENDANT: Yes, I understand that.

THE COURT: Do you stand on your plea of guilty?

THE DEFENDANT: I do.

THE COURT: What is the penalty? You might as well state it again.

MR. DREYER: The maximum statutory penalty is a term of imprisonment for five years or a fine of fifteen thousand dollars or both.

And if a term of imprisonment is adjudged by the Court, there should be a special parole term of at least two years, and since Mr. McDonald falls within the young adult offender statute, he is also subject to being placed in the custody of the Attorney General for a period of up to six years.

THE COURT: Do you understand now you face those statutory consequences by pleading guilty this afternoon?

THE DEFENDANT: Yes.

THE COURT: And do you stand on your plea of guilty?

THE DEFENDANT: I do.

THE COURT: All right. I will order a pre-sentence investigation and defer sentence without date. That means it will be brought on by a notice from the U.S. Attorneys Office.

I assume he has posted bail?

MR. KIETZMAN: He is free on the recognizance bond.

THE COURT: That will continue in the same status until the time of sentence, and I think Mr. Waterson should note that this defendant and the other defendants, the agreement is also

that after their sentence they are going to be continued on bail pending the decision on appeal.

MR. DREYER: Yes, Your Honor.

THE COURT: And that will apply to Mr. McDonald and also to the others, and he will then be released on his own recognizance, I assume.

MR. DREYER: Yes.

THE COURT: All right. Now he should speak to Mr. Waterson.

MR. KIETZMAN: Thank you, Your Honor.

MR. DREYER: Thank you, Your Honor.

CERTIFICATION

I, George T. McGloine, Official Court Reporter for the United States District Court in and for the Northern District of New York, do certify this to be a true and accurate transcript of the stenographic record of the foregoing taken at the time and place noted in the heading hereof.

George T. McGloine
Official Court Reporter
United States District Court
Northern District of New York

Albany, New York

October 23, 1976

PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

PETER M. LAZARSKI,
CRAIG L. NEWMAN,
NEIL B. WINNER, and
YOK LEE

SENTENCE MEMORANDUM

This memorandum will set forth considerations which, it is suggested, strongly support the imposition of a sentence of probation upon the defendant Craig L. Newman.

1. An examination of the defendant's personal history reveals that the defendant possesses highly favorable personal characteristics which strongly suggest that his personal rehabilitation could be achieved by a sentence of probation and that he would never again involve himself in criminal activities.

He has acheived a fine academic record during his years of education that is indicative of years of conscientious and purposeful work as well as a high level of intelligence and personal discipline.

He has had a conscientious and responsible work record that is clearly illustrated by a long succession of summer jobs, commencing at the early age of 13 years old, during his years as a student and by his employment with the Audio-Visual Corporation and Creative Media Inc. since his graduation from Rensselaer Polytechnic Institute in June of 1974.

In addition, Mr. Newman has enjoyed a stable and rewarding

marriage with his wife Lynn that has continued and grown in strength during the prosecution of this case. It is strongly indicative of a stable personal life and a mature ability to cope with the personal demands of the marriage relationship and the stresses of being the subject of a criminal prosecution.

These favorable personal characteristics, as well as others such as his strong love and concern for his parents and brothers and sisters and his personal integrity, are perhaps most clearly indicated by the warm and extended support Mr. Newman has received from those persons who have been most closely acquainted with him.

This support has been forthcoming from such diverse sources as Mr. Claude C. Casey, Headmaster of St. Paul's High School (Exhibit A); Mr. Robert G. LaFleur, Associate Professor of Geology and Mr. Newman's academic advisor at Rensselaer Polytechnic Institute (Exhibit B); Mr. Gerard A. Glasser, C.P.A., a family friend and associate for some fifteen years (Exhibit C); Mr. Irwin Kaye, Principal of the Oceanside Public Schools, Oceanside, New York and a person acquainted with the defendant for some eighteen years (Exhibit D); Dr. Michael Orange, M.D., the family Pediatrician who has known the defendant since birth (Exhibit E); Dr. Saul Pavlin, Director of the Sarah Center for Advanced Training in Family Therapy, who has known the defendant intimately since September of 1972 in his professional capacity (Exhibit F); Mrs. Elaine Silver, a family friend for some ten years (Exhibit G); Dr. Seymour G. Numeroff, D.D.S., a family friend and dentist who has known the defendant for some fifteen years (Exhibit H); Mr. Bernard S. Gross, Vice President of Batten, Barton,

Durstine & Osborn, Inc., and long-time family friend (Exhibit I); Professor Murray Alpert, Director of Psychology at the New York University Medical Center, who has been personally acquainted with the defendant since the age of seven years old and for whom the defendant was employed (Exhibit J) and finally the defendant's parents Mr. and Mrs. Roy Gomes (Exhibit K).

Some examples from these personal expressions of support and confidence are perhaps worthy of individual note. Mr. Casey made a personal recommendation of the defendant to the Dean of Georgia Tech as a student in which he had a particular interest and who he was personally recommending beyond the normal recommendation of this type. Mr. Irwin Kaye went far beyond a warm personal endorsement of the defendant's personal characteristics to offer to personally appear in court for the defendant and to further offer his services as an administrative officer in education in New York State in any capacity the court might desire. Professor Alpert also offered his personal services in the future to assist the defendant, in addition, to warmly recall his experiences with and knowledge of the defendant. Dr. Pavlin, who has known the defendant so intimately in his professional capacity, wrote of the defendant with great professional insight and experience in analyzing the defendant's reaction to his criminal prosecution and his future conduct. In short, those who have known the defendant the best have recommended and praised his personal characteristics the most highly and have brought their collective judgment that the defendant would never again be involved in criminal activity to the Court's attention.

2. The second consideration supporting the imposition of a sentence of probation upon the defendant is the existence of strong internal and external forces to deter any future breaches of the law.

The defendant himself has experienced an enormous and on-going sense of guilt and remorse for his conduct and for the damage that it has caused his wife, family and friends. This internal agony of shame and guilt is cited at length in Dr. Pavlin's report, movingly noted in the letters of his parents, and, perhaps most important, is stated by the defendant himself in his letter to Mr. Waterson. The enormous contrast between the defendant's criminal conduct in this case and otherwise exemplary life has only heightened the enormous sense of guilt and shame he feels for his personal failure and the effect it has had on his wife, family and friends. This shame and guilt will continue in the years to come as a powerful internal check against any further criminal behavior.

In addition, there are external checks to any such further criminal activity such as the defendant's continuing financial responsibility to his wife Lynn, who is now unemployed and owes some $1,500.00 in educational loans, the assistance of his family and friends to progress in his career and lead a blameless personal life, and his continuing financial obligation to repay his family for the legal expenses incurred in his defense. Lastly, of course, there is the legal check that further criminal activity would be a violation of his probationary status and would subject him to incarceration.

3. The third consideration supporting the imposition of a

sentence of probation is the enormous punishment the defendant has already suffered. The deep sense of personal guilt and shame before his wife, family, and friends when taken together with four days in jail awaiting release on bail, the financial strain of defending this prosecution, and the tremendous emotional strain on himself personally and on his wife and family for some six months while this case has been pending already constitute a punishment of tremendous weight and consequence.

4. The fourth consideration supporting the imposition of a sentence of probation upon the defendant is his record of never having been previously involved in criminal activity. This fact, when taken together with the favorable personal characteristics and achievements previously addressed, strongly suggests that the defendant's uncharacteristic lapse into criminal activity in the instant case was an aberration that is most unlikely ever to be repeated. It was a crime of immaturity that was contrary to the defendant's entire personal history and life and, as such an exception to an otherwise blameless life, it is unlikely ever to be repeated.

5. The fifth consideration supporting the imposition of a sentence of probation upon the defendant is the frank and open manner in which the defendant has cooperated with representatives of the Drug Enforcement Administration and the Probation Department. This cooperation is strongly indicative of both the defendant's deep sense of guilt and his realization that he must avoid future criminal activity in order that he never again find himself in similar circumstances.

PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN

In sum, it is respectfully suggested that the imposition of a sentence of probation on the defendant would satisfy the needs of society as to both present punishment and future protection and would be a truly just solution and end to the case of the People of the United States of America vs. Craig L. Newman.

Terence E. Shanley
SHANLEY & SHANLEY
Attorneys for Defendant
Craig L. Newman
Office Address
35 First Street
Troy, New York 12180
274-1314

EXHIBIT A-1 TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM HEADMASTER OF ST. PAUL'S SCHOOL TO CHIEF PROBATION OFFICER DATED MAY 13, 1976

St. Paul's School

Garden City, New York

OFFICE OF THE HEADMASTER

May 13, 1976

Mr. Frank Waterson
Chief Probation Officer
U.S. District Court
Northern District
Federal Building
Albany, New York

The enclosed accompanied each college application of Craig Gomes as he was known while in attendance at St. Paul's School. The family name of Gomes was used as a means of preventing unnecessary explanations since he was residing with his stepfather. The legal name of Craig L. Newman is in effect.

Further, with applications to Johns Hopkins, University of Virginia, Rensselaer Polytechnic Institute and Massachusetts Institute of Technology, the following specific recommendation accompanied the applications:

I would without hesitation enthusiastically recommend Craig to you for consideration for the Class of '73. With his high character, determination, ability to adjust quickly and completely, and his preparation, I am fully convinced that he will contribute noteworthily to (name of college). I would sincerely hope that every consideration will be given his application and that a favorable decision will result.

To Georgia Institute of Technology, the following accompanied the application:

I would without hesitation enthusiastically recommend Craig to you for consideration for the Class of '73. With his high character, determination, ability to adjust quickly and completely, and his preparation, I am fully convinced that he will contribute noteworthily to Georgia Institute of Technology I would sincerely hope that every consideration will be given his application and that a favorable decision will result.
Dean Carmichael:
During my visit with you at Georgia Tech. in April '66, you mentioned that if ever I had a particular interest in one of my students applying to you to so state. This is a young man for Tech.

Although I have had no contact with Craig since his being graduated in 1969, the above anticipated results and characterizations could be anticipated to continue to apply.

Respectfully submitted,

Claude C. Casey, Jr.
Headmaster

EXHIBIT A-2 TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER OF RECOMMENDATION FROM HEADMASTER OF ST. PAUL'S SCHOOL DATED 1968/69

St. Paul's School

Garden City, New York

OFFICE OF THE HEADMASTER

1968/69

Re: Craig Gomes (Newman)

Craig is the type of young man which any school would consider an asset to the student body. Not only does he possess superior innate ability, but the necessary determination for the development of potential; not only is he cooperative and determined but gentlemanly and considerate of others. Upon joining St. Paul's student body at the beginning of his eleventh grade, he immediately impressed Faculty and peers alike with the above mentioned characteristics. He does display strong leadership qualities by doing and not by ordering. Craig is serious, determined, capable of open thought and genuine interests and in every respect an outstanding young man.

Claude C. Casey, Jr.
Headmaster

EXHIBIT B TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM RENSSELAER POLYTECHNIC INSTITUTE TO CHIEF PROBATION OFFICER DATED MAY 13, 1976

Department of Geology
West Hall

Rensselaer Polytechnic Institute Troy, New York 12181

May 13, 1976

Mr. Frank Waterson
Chief Probation Officer
Northern District
Federal Building
Albany, New York 12201

Dear Mr. Waterson:

Craig Newman has asked me to comment on his behalf, as his academic advisor and professor in several courses. I had contact with him for a time between the Spring of 1972 and June 1974.

He transferred into Geology in his junior year after a slow start in chemistry. Except for a good final term of B average, he did not particularly distinguish himself academically. However, in spite of a lack-luster showing, Craig always seemed to exhibit a quick and keen intellect which he could articulate with great facility when he chose to. I think if he could begin again he would distinguish himself.

It is always difficult in this school to become well acquainted with students, and I cannot claim to know Craig particularly well. But in my contact with him I am persuaded he is smart, capable and I think by now dedicated to achieving something worthwhile. The present dilemma of all the boys in this case whom we know as former students is heartbreaking - mostly because of the stupidity of their actions. I find it hard to believe Craig is criminally inclined.

I hope the court recognizes his inherent good qualities and accomplishment in having graduated from a rigorous institution, and I ask you to extend my request for as little punishment as will satisfy the case.

Sincerely yours,

Robert G. LaFleur
Associate Professor of Geology

RGLaF:vb

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EXHIBIT C TO RE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM GERARD A. GLASSER, C.P.A. TO CHIEF U.S. PROBATION OFFICER DATED MAY 13, 1976

C14

GERARD A. GLASSER & CO. P.C.
CERTIFIED PUBLIC ACCOUNTANTS

98 CUTTER MILL ROAD
GREAT NECK, N.Y. 11021
(516) 829-8333

May 13, 1976

Frank T. Waterson
Chief U. S. Probatic Officer
P.O. Box 496
Post Office Building
Albany, N. Y. 12201

Dear Sir:

I am most distressed to learn of the problem facing Craig Newman. It is inconsistent with what I have always known his goals in life to be.

I have known Craig for over 15 years and followed his progress through high school and college where he was always an outstanding student and an honest and respectable young man.

I have known his family intimately and always considered his relationship with them to be a good one, with unusual family communication. He is a devoted son and attentive brother.

There are few young men of my acquaintance that I admire as much as Craig Newman. I strongly recommend that he be given the opportunity to justify my confidence in him.

Very truly yours,

GERARD A. GLASSER

EXHIBIT D TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM PRINCIPAL OF OCEANSIDE SENIOR HIGH SCHOOL TO CHIEF PROBATION OFFICER DATED MAY 13, 1976

Oceanside Public Schools

OCEANSIDE, NEW YORK 11572

SENIOR HIGH SCHOOL

May 13, 1976

Mr. Frank Waterson, Chief Probation Officer
U.S. District Court - Northern District
Federal Building
Albany, New York 12200

RE: Craig L. Newman

Dear Mr. Waterson:

When I heard of the difficulty Craig has become involved in I felt compelled to offer whatever assistance might be useful to the court.

It's easy to relate the fine points in this young man's favor. He has always been a fine student with great ability and inquisitiveness. As a teenager his volunteer work in biological research at Bellevue Hospital in New York City was a measure of his uniqueness among his peers. His tutorial work with youngsters exemplified his patience, knowledge and true potential. He is indeed a person worthy of having responsible adults come forth to attest to his exemplary past history.

I have known Craig for 18 of my 25 years in public education. There is no doubt in my mind that his future is going to be that of a contributor to society. The basic nature of this young man is such that I firmly believe his initial confrontation with the law was enough to dispell any future thoughts or actions that might jeopardize his future, or the future of others.

As an administrative officer in education in New York State, I would consider it an honor and a privilege if the court wished to avail themselves of my service in any capacity on behalf of Craig L. Newman. He has much to offer and it would be a great waste to incarcerate him rather than encourage him to fulfill his potential. I am willing to personally appear in court to affirm my faith in this young man.

If any additional information would be useful, please contact me.

Sincerely yours,

Irwin Krive
Principal

EXHIBIT E TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM MICHAEL ORANGE, M.D. TO CHIEF PROBATION OFFICER DATED MAY 11, 1976

MICHAEL ORANGE, M. D.
24 MINEOLA AVENUE
ROSLYN, N. Y. 11576

INFANTS, CHILDREN AND ADOLESCENTS

MANHASSET 7-0808

May 11, 1976

Dear Mr. Waterson:

I have known Craig Newman almost all his life as his family Pediatrician, and have observed closely through the years his entire development. He has always been a well disciplined and very bright person. He has never been involved with any delinquent behavior during his adolescent years and has grown into a responsible citizen of excellent character to the best of my knowledge.

Yours truly,

Michael Orange, M.D.

MO/rl

EXHIBIT F TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM DIRECTOR OF SARAH CENTER, FAMILY THERAPY TRAINING INSTITUTE TO CHIEF PROBATION OFFICER DATED MAY 21, 1976

May 21, 1976

Mr. Frank Waterson
Chief Probation Officer
U. S. District Court
Federal Building
Albany, New York 12200

Re: Craig L. Newman

Dear Mr. Waterson:

I first had contact with Craig in September 1972 when I began psychotherapy with his mother. Mrs. Gomes had come to me for help with her severe marital problems at that time. Helping her required that I see the entire family periodically for family therapy sessions. I came to know all of them most intimately.

I recall clearly that I liked Craig immediately for his warmth as a person, his profound and open love for his mother, stepfather, two younger sisters and his younger brother. I also experienced him as a person with a strong sense of values and a compelling need to examine himself honestly. I felt then as I do now that he was a very sensitive young person, searching for his identity and his maturity.

I saw Craig again in December, 1975 when he sought help for his problems immediately after his arrest and release. In our first session, I experienced him as deeply agitated, guilt-stricken, highly disappointed in himself, filled with remorse, disbelief and shock. He said that he needed to understand what had driven him to this terrible event. He needed to know what had caused him to hurt himself, his wife and his family. He said it was beyond his own comprehension.

Craig had moved to Troy away from his home and family in order to attend R.P.I. in 1969. He was perceived as a fine student in college, respected by all. After graduation from college, he worked for Creative Media, where he is currently employed. His employers and co-workers know him as a responsible professional on the job, and he is highly respected by all.

EXHIBIT F TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM DIRECTOR OF SARAH CENTER, FAMILY THERAPY TRAINING INSTITUTE TO CHIEF PROBATION OFFICER DATED MAY 21, 1976

In July, 1975 Craig married Lynn. In March, 1976 his parents officialized their stormy separation with a legal agreement. They are now awaiting a decree of divorce. For the second time in Craig's life,(his mother and natural father's divorce occurred when he was six years old.) he re-experienced the loss of his intact family, and more profoundly perhaps the loss of his stepfather who had raised him since his own father had emotionally abandoned him. This pain, which added to the original trauma of the first divorce, was too much for him to bear. He tried to repress, and found it difficult to accept his feelings of loss and abandonment. He tried to busy himself in his work and his new marriage. Trying to compensate for the imminent loss of his father, he reached out desperately to his friends unconsciously attempting to replace his father. No price was to high to pay for this contact, because he could not be alone again. All the feelings of hurt, rejection, pain and guilt that the six year old Craig had suppressed arose again. The wound was re-opened and bled. Craig felt, as children often do, responsible and guilty for his parents failure in their marriage. At this point, Craig was no longer functioning from his usual emotional stability. Wounded, confused, attempting without success to repress these feelings, his judgement became temporarily clouded. The internal pressures were too great. Craig tried to find solace in his contact with his friends. Unconsciously, he was saying, if he couldn't have his father, he would do anything to maintain his close friends. Among his friends, perhaps he could find the comfort of a father. There is no doubt in my mind that unconsciously he felt he needed to be punished for his parents problems. Perhaps if he were in trouble his fathers might return to him. So Craig hurt himself by breaking the law, and for the first and only time in his life, he went against his own basic values and his own character structure. Since he could not ask either father directly for contact and love, he would have to find another way.

Since his arrest, his stepfather has, in fact given Craig contact and help. His natural father continues to abandon him, although he is fully aware of the situation.

At the time that I first saw Craig after the disaster, his lack of conscious awareness of the underlying feelings which led to these events intensified his shock and trauma. During these last few months in my sessions with Craig he has suffered intensely. It is clear that he has suffered enough. He is now undisputedly aware, and understands the underlying conflicts and traumas that drove him. He is no longer driven by these feelings.

EXHIBIT F TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM DIRECTOR OF SARAH CENTER, FAMILY THERAPY TRAINING INSTITUTE TO CHIEF PROBATION OFFICER DATED MAY 21, 1976

Craig is a person with high moral values and ideals. I know he could never repeat any form of anti-social behavior again. This behavior was out of character for Craig, and stemmed directly from the impending divorce and ensuing feelings of abandonment and isolation. Imprisonment, in my considered view, would be totally destructive to Craig, because it would confirm his guilt, his terror of isolation, and permanent abandonment and rejection by his father. Psychologically, it would confirm that he deserves such terrible punishment, because he is a terrible son, responsible for the loss of both of his fathers. I feel he could not bear such punishment. His feeling would overwhelm him, and he would retreat internally to a world where he could not be reached by any of us, perhaps permanently.

It might be helpfull to you, to know something of my background. I have been formerly:

Associate Director, Division of Family Therapy, Department of Psychiatry, The Roosevelt Hospital, N.Y.C.

Director, Hawthorne Cedar Knolls-Jewish Board of Guardians, Hawthorne, New York.

Director of Family Therapy Training, Brookdale Hospital, Brownsville, Brooklyn, New York.

Clinical Coordinator, Wiltwyck School for Boys, N.Y.C.

Director, Floyd Patterson House, New York City.

Consultancies in Family Therapy:
N.Y. State Narcotic Control Commision, N.Y.C.

Addiction Services Agency, N.Y.C.

As a therapist having had intimate contact with many hundreds of young men, from all walks of life, Craig stands out as a young person of enormous potential and depth. He is a person of character, and all who know him respect him. His two younger sisters and brother continue to look to him as a model of a decent, loving and respected big brother, whom they have deeply loved and learned good values from.

I urge you, with all sincerity to allow Craig his freedom. He is committed to his own intensive therapy which I feel is ample insurance that his behavior could never be repeated again. He plans to move back to New York where he and his wife can be close to his family, his old friends, and his stepfather. I have no doubt that he will emerge from this tragic suffering to grow and mature more fully

EXHIBIT F TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM DIRECTOR OF SARAH CENTER, FAMILY THERAPY TRAINING INSTITUTE TO CHIEF PROBATION OFFICER DATED MAY 21, 1976

I ask for your help without any reservations because of my own feelings of respect for Craig based on my intimate knowledge of him. I know that this is a crucial moment in his life. All of us who move to help him now to return to his life will derive profound satisfaction. Given the opportunity now, Craig will make us all proud of him. I hope you will do everything in your power to help him. Please feel free to call me. 516-747-0339

Most sincerely,

Saul Pavlin
Director of Sarah Center
Family Therapy Training Institute

EXHIBIT G TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM ELAINE SILVER TO CHIEF PROBATION OFFICER DATED MAY 18, 1976

May 15, 1976

Dear Mr. Watterson,

I'm writing this letter on behalf of Craig Newman whom I have watched grow up these many years. I've always known him to be especially honorable, kind and helpful, as well as a brilliant student. I've been a close friend of his family for ten years and have known Craig as someone loved by all.

An incident stands out in my mind which I will never forget, and which has endeared Craig to me forever. My little girl Tina, heard the icecream mans' bell down the street one day. Without thinking and in a rush to get to him she pushed open the glass storm door

EXHIBIT G TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM ELAINE SILVER TO CHIEF PROBATION OFFICER DATED MAY 18, 1976

of our home with her arm and crashed through it. When I heard her cries and the crash I screamed and panicked. All I could think of along with calling the doctor was to call Suki Craig another, who is my dear friend. Craig answered. She wasn't at home. On hearing what happened, without even a moments hesitation, Craig hung up the phone and was at my home within five minutes. He properly controlled the bleeding by applying pressure to her wounds, removing glass and generally handling everything. He drove us immediately to the doctor who stitched her arm. The doctor said his quick thinking avoided massive blood loss. Aside from that, I'll never forget his gentleness with Tina and his calming influence on both of us. I had to write to you to plead on his behalf for mercy and clemency. It would be so terrible to think of the possibility of Craigs going to prison. He has so much to give others and himself. We all who know and love Craig hope and pray for the wise decision of the Judge.

EXHIBIT

EXHIBIT G TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM ELAINE SILVER TO CHIEF PROBATION OFFICER DATED MAY 18, 1976

this one mistake a wonderful young man has made, and not punish him any further. We feel that it could serve no further purpose. He has certainly learned his lesson. Craig has shown such character in so many ways and has possesses both the desire and the potential to become an extraordinarily outstanding member of society.

Very sincerely yours,

Elaine Silver

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EXHIBIT H TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM SEYMOUR G. NUMEROFF, D.D.S. TO CHIEF PROBATION OFFICER DATED MAY 19, 1976

SEYMOUR G. NUMEROFF, D. D. S.
388 MINEOLA BLVD.
MINEOLA, N. Y. 11501

PIONEER 6-6734

May 19, 1976

Mr Frank T. Waterson
Chief Probation Officer
U.S. District Court
Northern District
Federal Building
Albany, NY

Dear Mr Waterson,

Why is it so important for you to hear what I have to say about Craig Newman?

I'm certain that you will receive countless letters attesting to this remarkable intellect, his exemplary behavior as a teenager and of his achievement as a student.

I've observed this young man for the past 15 years that I have known him as a close friend, a friend of the family + as his dentist. He was always prompt for his appointments, and most respectful of my time + efforts. However, I must tell you of the qualities that I feel tell the inner story of this wonderful young man — the qualities that stand out most poignantly, distinctively + so meaningfully are his warmth, his paternal concern and consideration for his younger sister + brother whom he always brought with him to my office. His patient understanding and awareness of their fears + apprehensions seemed always remarkable to me. The quiet manner in which he comforted them with his obvious love + concern, his efforts to soothe + console — these qualities stand out so vividly in my memory as I recall our very close relationship.

Craig has stumbled + I'm certain that this unfortunate encounter with the Law will result in strengthening that facet of his character that appeals for understanding + help for those in need.

Most respectfully yours,

Seymour G. Numeroff

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EXHIBIT I TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM BERNARD S. GROSS, VICE PRESIDENT AND MANAGEMENT SUPERVISOR OF BBDO TO CHIEF PROBATION OFFICER DATED MAY 28, 1976

BBDO
Batten, Barton, Durstine & Osborn, Inc.

383 Madison Avenue, New York, N.Y. 10017 Tel. 212-355-5800. Cable Address BEBEDEOH, Telex 224320

May 28, 1976

Mr. Frank Waterson
Chief Probation Officer
U.S. District Court -
Northern District
Post Office Building
Albany, New York 12200

Dear Mr. Waterson:

This is my fourth try at a letter to you about Craig Newman.

The first time I started to tell you what a deeply decent young man Craig has always been - but I was sure others had told you that.

Then I tried to put into words how Craig has been more than a brother, more than a friend to his brother and sisters. I remember his enormous patience and care when he taught his little brother Chris to be not afraid of the water, to swim.

I remember Craig teaching his sister Valerie to ride a two-wheeler, running for what seemed like hours alongside her, telling her, "Don't worry, I won't let you fall."

I remember Craig spending evening after evening with his sister Donnis, trying to unravel for her the mysteries of algebra, and making her understand.

He has been - has had to be - more of a father to his brother and sisters than most boys, but I guess the other people that know him and love him must have told you that, too.

EXHIBIT I TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM BERNARD S. GROSS, VICE PRESIDENT AND MANAGEMENT SUPERVISOR OF BBDO TO CHIEF PROBATION OFFICER DATED MAY 28, 1976

I wanted to tell you of the pain he must have felt at his mother's recent separation - the second time in his life Craig has "lost" a father. But Craig is a man, and the way of men is that they must pay for the wrong things they do. I tell you though, that the punishment Craig has already inflicted on himself and those who love him is immense and terrible.

I guess the only thing I can really say is what I started to say first. And that is if you could only know, really know Craig's heart, you would know what a truly good young man he is. I suppose words like "decent" and "good" are old-fashioned nowadays, but I can't think of better ones to describe Craig.

I know his heart. I feel his pain. I hope you will help him.

Sincerely,

Bernard S. Gross

Bernard S. Gross
Vice President and
Management Supervisor

BSG/jcd

EXHIBIT J TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM MURRAY ALPERT, PROFESSOR-N.Y.U., DIRECTOR OF PSYCHOLOGY-N.Y.U. MEDICAL CENTER, UNIVERSITY HOSPITAL TO CHIEF PROBATION OFFICER

Dear Mr. Waterson,

My friendship with Craig and his family began when he was seven years old. Craig has always been a sensitive, very bright sympathetic child. We very early on, developed a warm personal relationship and I have always enjoyed his company and his interested creative mind.

When he was in high school Craig developed a keen interest in the sciences and because of this interest and at his request I arranged for him to do volunteer work in our laboratories where biochemical research into the causes of mental illness is carried on. Craig took constructive advantage of the opportunity working with great dilligence, without a stipend, and from the start earned the respect of those in charge of the program. He showed a cheerful willingness to do even the most menial tasks. He had a great interest in the patients he met and showed a real sympathy for their problems.

Craig's present situation has shocked and upset me ~~beyond~~ VERY MUCH. I HAVE TRIED TO UNDERSTAND [illegible]. words. It seems so out of character with his highly developed sense of right and wrong, ~~and commitment to good citizenship~~. I know thatt some profound upset must be the cause for such atypical behavior for Craig, ~~whom I have known intimately all these years~~. He has had a stormy home life and I think he may have had less than adequate opportuni ty tp explorehis ideas with an adult male role-model As you must know his mother is twic divorced, the last separation culmating at the period when Craig got into his present difficulty.

EXHIBIT J TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM MURRAY ALPERT, PROFESSOR-N.Y.U., DIRECTOR OF PSYCHOLOGY-N.Y.U. MEDICAL CENTER, UNIVERSITY HOSPITAL TO CHIEF PROBATION OFFICER

I think that some of the warmth of my relations with Craig resulted from his eagerness for adult male companionship.

I hope my view of Craig is helpful to you. I know that this is a terribly traumatic experience for him because a problem of this kind is so foreign to his nature. I would be happy to do anything I could to help him in ~~the~~ H.S future as a trusted friend. I know that he has a great deal to offer and feel sure that he will now develop a life for himself that will utilize rather than impair, his fine human capacities. I urge you to give him this opportunity to do this. He is such an outstanding young person. If there is anythong further I can do please contqt me.(212) 679-3200 ext. 4004.

Sincerely,

Murray Alpert
Prof. M. Alpert
Director of Psychology
N.Y.U. Medical Center
University Hospital

EXHIBIT K TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM DEFENDANT NEWMAN'S MOTHER TO MR. BOICE DATED JUNE 2, 1976

June 2, 1976

Dear Mr. Boice,

You asked at the end of our interview last Thursday, if there was anything more I wanted to add. You were kind enough to say I could call or write.

In retrospect, realizing how much we talked about events and dates, I wondered if the feelings had been neglected. It had all seemed so matter-of-fact. I felt there was so much I hadn't told you.

I didn't remember if I told you simply how much I love Craig? Or that he never gave me cause to feel anger, hurt, or shame while raising him? On the contrary, from infancy on he's been a joy and a source of great pride and happiness to me and our family. As you know, I have three other children, and with great appreciation and awe, I am able to say the same about them.

I didn't tell you about Craig telling his sisters and brother what he had done. In his place, I don't think I could have had the courage. He talked to them as soon as he got home. He was scrupulously honest, trying very hard to keep from getting too emotional, but it was impossible not to cry. Chris, my eleven year old, looking up at him, pale, tight little face, hardly able to believe what he was hearing but having to, because Craig, who he adored, always told him the truth. Valerie, fifteen, going through the normal difficulties of adolescence, plus the trauma of her parents divorce, trying valiantly to cope with this crisis too. And Donnis, his full sister, the child most deeply linked to him emotionally and spiritually, feeling the torture of his pain as her own. I hope we will all be able to forget that day as a bad dream.

I don't think I told you, Mr. Boice, how frightening this has been for the children, living with this awful dread every day now for over five months. The nightmare fear of Craig possibly going to jail, hangs like a dark cloud, in a house that had just begun to see sunlight after the last storm.

I am so grateful that Craig has Lynn by his side. She is bearing up under this strain, with a maturity beyond her years and experience. She is as dear to me as my own children are. Lynn knows, because they have one heart, that most of Craig's agony now, comes from living with what he has done to those he loves. I, also know that, Mr. Boice, and I pray you do, too. You laughed kindly, and put up your hands in mock dismay, when I said Craig would <u>never</u> get into trouble again. I understand your reaction. The word "never" is an absolute and in your professional experience sounded naive and unrealistic, perhaps. But the strength of Craig's love, is a reality, and I know he hopes only for the chance to prove the faith we have in him is not wasted.

EXHIBIT K TO PRE-SENTENCING MEMORANDUM OF DEFENDANT NEWMAN - LETTER FROM DEFENDANT NEWMAN'S MOTHER TO MR. BOICE DATED JUNE 2, 1976

I implore you, Mr. Boice, as perhaps only a mother feels free to, without artifice or pride, instinctively fighting for her child. Please give him this chance. Please give his young wife a chance to continue their marriage without the devastating effects imprisonment would have on them, and the children they will have one day.

Craig was in jail almost four days....four centuries to him. I will never as long as I live, forget his face when we finally got him out. Indescribable fear, shock and horror in his eyes....but even worse to me, were the four words he said, and repeated over and over, "You die in there.....You die in there.....You die in there....."

Please, Please believe me. He has been punished and is still being punished. We are all of us, being punished.

I do appreciate the difficult decision you must make. I am deeply aware of your responsibility to society.

I most humbly ask for your mercy.

PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RECEIVED
JUN 17 1976
U. S. DISTRICT JUDGE
ALBANY, NEW YORK

UNITED STATES OF AMERICA

against

Cr. No. 75-CR-166

PETER M. LAZARSKI,

PRE-SENTENCING MEMORANDUM

INTRODUCTION

Aaron Nussbaum, a former District Attorney in the Appeals Bureau of the Kings County New York District Attorney's Office for over 25 years, states in one of the most recent and enlightened works on crime and punishment that

> "No matter how genuine a reformation the exoffender may have achieved or how earnest his quest for rehabilitation and reform, he will remain a prisoner of his criminal record throughout his days" (A Second Chance: Amnesty for the First Offender, Hawthorne Press, 1974, at page 4)

Professor Marvin E. Wolfgang, Chairman of the Department of Sociology at the University of Pennsylvania has stated

> "The criminal justice system is not responsible to new clients - that is, first time offenders" (Nussbaum, A Second Chance: Amnesty for the First Offender, supra., at p. 64)

In recognition of the special position which first offenders should have in the eyes of the law, particularly those involved in non-violent crimes, Mr. Nussbaum proposes that the first offender be granted amnesty upon fulfilling all the obligations of his probationary sentence. While Mr. Nussbaum's concept has

already taken firm root in the living law, having been adopted in whole or in part in California, Kansas and England, it is not yet the law in the federal jurisdiction. Nonetheless, it underscores the special qualities which the first offender brings to the sentencing process and points the way to the lenient treatment which the first offender justly deserves.

It is the thesis of this memorandum that Peter Lazarski's isolated misadventure, his first offense and most assuredly his last should be dealt with by this Court by a sentence of probation. The self-inflicted punishment which Peter's conduct has imposed upon him and will impose upon him for the balance of his life needs no augmentation beyond that which a probationary sentence would afford. As a consequence of his conduct, Peter has and will for the balance of his life, drink shame to the dregs. He is a prisoner of his own tragic foolishness and any punishment beyond a sentence of probation would be inappropriate, unjust and redundant.

FACTUAL BACKGROUND

Peter Lazarski, presently 25 years of age, having been born on March 24, 1951, and a resident of this State and gainfully employed here, has been convicted, upon his plea of guilty, of the crime of Conspiring to Manufacture and Distribute the Controlled Substance, Methaqualone, as set forth in the second count of a two count indictment.

It is hoped that this memorandum and the appended exhibits will bring to the Court's attention information which the Court will utilize in considering the question of the sentence to be imposed.

PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI

MR. LAZARSKI'S BACKGROUND

This young man's history compellingly supports a sentence of probation.

Mr. Lazarski has spent the 25 years of his life either in Syracuse, New York, where he was raised and where his family lives or in Troy, New York, where he went to college and thereafter worked. He is a product of the Syracuse School System having attended Henninger High School in Syracuse, New York, prior to his enrollment at R.P.I. While in High School he persevered as a member of the varsity basketball team, although he was only third string and played a total of five minutes during the entire season. He was somewhat more accomplished and successful as a member of the high school track team where he ran the mile (his best time was 5 minutes 10 seconds) and high jumped (his best jump was 6 feet). While in high school he participated in a local radio program entitled "High School News Bowl" which involved students in different schools being asked questions concerning that week's news events and then rating the students on their degree of familiarity with the news.

Upon his graduation from high school he enrolled at R.P.I. and attended college there from September of 1968 until December of 1972 and from February of 1974 through June of 1974 obtaining his Bachelor of Science Degree in Chemistry from R.P.I. on May 31, 1974.

Again at R.P.I. he involved himself in radio programing, serving as an announcer on WRPI during the Spring of 1971 and the Fall of 1972.

PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI

Peter has been actively employed, within the limits permitted by his age, since 1963 when he went to work as a paperboy for the Syracuse Herald Journal American. He served as a paperboy until December 1967. In the summer of 1968, following his graduation from high school, he was employed by the Syracuse Department of Public Works. Upon coming to Troy in September of 1968, he obtained parttime work at the Troy Boy's Club, working there for approximately 20 hours per week from September of 1968 until the completion of his Freshman year in June of 1969. That summer he worked at Crouse-Hinds in Syracuse, New York, as a sheet metal worker. Upon his return to R.P.I. for his Sophmore year he again resumed his work as a parttime worker at the Troy Boy's Club and held that job from September of 1969 until the completion of his Sophmore year in June of 1970. During the summer of 1970, he was a self-employed painter in the Syracuse area and worked parttime selling Fuller Brushes door-to-door for Joseph Chisling, Cicero, New York. Upon his return to Troy in September of 1971, for his Junior year at R.P.I. he had some difficulty finding parttime work but was able periodically to obtain painting jobs. Following completion of his Junior year in June of 1972, he remained in Troy, New York, and obtained some additional painting jobs in June and July of that year locally. In August of 1972 he obtained parttime work for K-C Refrigeration Transport working one night a week loading and unloading trucks. He held this job until the completion of the fall semester in R.P.I. in December of 1972. From September of 1972 through December of 1972 he also worked on a parttime basis at the Rensselaer Union Food Service working one to two nights per week depending on the week. In Janaury and February of 1973, he worked parttime,

(20 hours per week) for United Parcel Service in Albany, New York and from April of 1973 through August of 1973, he worked at Crucible Steel in Solvay, New York as grinder than as an inspector. In September of 1973 until February of 1974 he worked at Bristol Labs in Syracuse, New York. In February of 1974, he resumed his education at R.P.I. and completed the final semester necessary for his Bachelor Degree in Science. At Bristol Labs he operated a computer monitored analysis machine. Following his graduation from R.P.I. Mr. Lazarski obtained employment with Hudson Valley Community College in Troy, New York in the Chemistry Department where his work involved setting up experiments, equipment checking and providing solutions for experiments. He held that job until January of 1976 when he was forced to take a leave of absence because of the present problems created by his arrest and indictment (annexed hereto, made a part hereof and incorporated herein by reference is a resume' submitted by Peter Lazarski covering his work experience at Hudson Valley Community College, at Bristol Laboratories and at Crucible Steel). Following his leave of absence from Hudson Valley, Peter looked for work in the Syracuse area for approximately one month without success. Starting the second week in February of 1976 he went to work for his father doing plumbing, carpentry and painting work on a number of jobs which his father was working on. This work lasted for approximately two months after which Peter was again out of work but nonetheless looking for a job. During the first week in May he was hired by Allwash of Syracuse, Inc., and holds that job to date. In that job he is involved with the cleaning and washing of buildings, inside and out, and the sand

blasting of the exterior of buildings.

While a student of R.P.I., Mr. Lazarski served as a counselor at the Troy Boy's Club during the school years of 1968 - 1969 and 1969-1970. He also helped organize a benefit for the St. Mary's School of Troy called Playday at R.P.I.'s north field. This involved a significant time and effort contribution on his part during the late winter and early spring of 1974. The benefit itself took place on April 27, 1974.

Peter is the oldest of four children. He has one sister who obtained her Bachelor of Arts in History from the University of Wisconsin this month, a brother who has completed his Freshman year at the State University of New York at Fredonia and a second brother who graduates from high school in Syracuse this month. His father has been involved with the Syracuse Fire Department for more than 30 years in addition to his other work and presently holds the position of District Chief of the Syracuse Fire Department.

Peter is a Catholic. His Selective Service Classification is 1-h. His principle extracurricular interests are stamp and coin collecting and he has good collections of each.

It should be clear from this personal history that Peter is a fundamentally substantial and worthwhile human being whose present predicament is completely foreign to the basic nature and character of the young man. His personal background establishes beyond peradventure that this was an isolated and aberrant mistake which would never be repeated. Peter has a great deal to contribute to the community and society in which he lives and works and the potential which he has should not be permanently crippled by a jail sentence. He aspires to resume a career in

which he will be able to utilize his education and is hopeful of resuming his employment at Hudson Valley Community College in the event a sentence of probation or other nonincarceration sentence is imposed or otherwise obtain employment in an educational facility in his chosen field of Chemistry.

The consistancy of character demonstrated by Peter Lazarski's personal background should not be subjugated to an isolated out-of-character mistake in assessing the appropriate punishment to be imposed. The man on balance is the man who should be sentenced and not simply the individual who foolishly involved himself in this criminal enterprise. It is clear from the history of the man that the heavy penalty of the criminal record itself is indeed severe punishment and perhaps punishment enough; but, in any event, a man with this background and history at worst deserves a sentence of probation.

CHARACTER REFERENCES

Appended to this memorandum are 18 living testaments to the nature and character of Peter Lazarski. These individuals represent the views of a widely divergent collection of human beings who vouch for Peter Lazarski and who speak eloquently to the enormity of the injustice that would be perpetrated if he were to be incarcerated upom this plea of guilty.

The character reference letters represent the judgment of Congressmen, of contempories, of co-workers, of college professors, of relatives and of a Roman Catholic priest. While the letters are appended in full to this memorandum, I am taking the liberty at this time of quoting some of them:

Congressman James N. Hanley: Peter has been an

outstanding citizen . . . I can vouch for Peter's good character and outstanding work habits."

Monsignor Basil Scredowych: "I have known him to be an honest man with good morals and he is a practicing Catholic in good standing in this parish."

Anna Rybak: "Peter has a very close relationship with his family. His love and respect for his parents, brothers and sister are constant. He attends church regularly and is polite, considerate and of good character."

Colleen Roam: "Peter is a very warm, sensitive and sincere human being. Peter has shown me great understanding in matters both personal and academic. As long as I have known Peter he has held down a job to pay for his schooling. In spite of a very tight schedule, Peter has invaribly found the time to help his friends. I would consider it a moral injustice and a grave error if a young man of Peter's character and integrity was forced to waste a number of years in prison because of an isolated and tragic mistake on his part."

Summary of Observations of Hudson Valley Community College Professors: Peter was a diligent and conscientious worker who can be a productive and law abiding citizen and member of the community.

Congressman William F. Walsh: "In my opinion the interest of justice and of society would best be served if Peter Lazarski were considered an outstanding candidate for probation, based on his background, on his otherwise perfectly clean record and on his potential as a productive, law abiding citizen in the future."

This is just a very brief sampling of some of the observations contained in a few of the numerous letters which have been submitted on Mr. Lazarski's behalf.

Mr. Lazarski's efforts in obtaining the enclosed references for your consideration reflect his recognition of the seriousness of the matter and certainly demonstrate the responsible nature and character of the young man. In assessing the sentence to be imposed upon Mr. Lazarski, the Court should give every considera-

PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI

tion to the impressions of Mr. Lazarski of those who know h t best.

MR. LAZARSKI'S COOPERATION WITH THE GOVERNMENT

From the very inception of his apprehension, Mr. Lazarski cooperated fully and extensively with the government. He gave a series of full confessions to various governmental agents, identifying persons involved, the activities engaged in, the equipment utilized, the chemical preparations employed and the drug produced. At the scene at the time of his arrest he cooperated with the government chemists present. In the absence of his cooperation, neither Yok Lee nor Mark McDonald could have been identified nor could they have been arrested. He is the only one who cooperated with the government at the time of his arrest. Hi extensive and honest cooperation permitted the government to determine the full scope of the operation and apprehend all parties to the operation. Every iota of cooperation which he extended was an incriminatory act on his part and could and would have been used against him upon his trial. He thus sacrificed his constitutional privileges and acted regardless of the personal and criminal consequences of his self-incrimination. The regret that Mr. Lazarski has for his involvement in this entire scheme cannot adequately be expressed in words but his conduct in working with the government to bring the entire scheme to an end is some measure of the recognition on his part of the wrong in which he was involved.

In addition, Mr. Lazarski, subsequent to his plea of guilty, again cooperated extensively with Agents Sturrock and Tripp of the Drug Enforcement Administration imparting to them all of the

information which he had not only with respect to the criminal activity in which he and the others whom he identified were involved, but also with respect to any other drug dealings or drug dealers of which he had knowledge. He identified by name persons who had purchased drugs, persons who, to his knowledge, had dealt with either he or other members of the conspiratorial group and imparted as much detail and information as he could with respect to the identities of these persons and the dealings in which those persons had been engaged. In short, at every step along the way, Mr. Lazarski has cooperated with the government.

Mr. Lazarski's cooperation facilitated the government's investigation and lead to the arrest and indictment of two of the co-conspirators. It allowed the government to close down the criminal activity. His continued cooperation with the government has furnished them with additional information which may well be useful to them in other investigations.

MR. LAZARSKI'S PLEA OF GUILTY

Mr. Lazarski has acknowledged his responsibility for his misconduct. He has fully assumed the consequences of his conduct by his plea of guilty. In voluntarily pleading guilty to the second count of this indictment, he foreswore certain inalienable constitutional rights and spared the Court, the government and the community additional pre-trial hearings and a long and arduous trial.

His cooperation with the government not only made possible the indictment and arrest of Yok Lee and Mark McDonald, but also is a strong factor in building the case against all four of the

co-defendants and no doubt influenced the co-defendants to plead guilty.

He must, of course, pay a heavy personal price for having cooperated with thegovernment but that cooperation and his plea of guilty should and must militate in his favor in determining the sentence to be imposed.

THE JUSTICE AND ADVISABILITY OF PROBATION

The mere existence of a criminal record severely penalizes and forever stains the fabric of the life of Peter Lazarski. While it is respectfully submitted that the criminal record itself, of which he will be a prisoner for the rest of his life, is punishment enough, if the Court feels that additional punishment is necessary, that punishment should be in the form of nothing more severe than probation.

Dr. Carl Menninger, the famed psychiatrist and penologist, has stated

"Jails ruin young men"

The bleak realities of prison are, as California Governor Edmund G. Brown, Jr., stated

"They don't rehabilitate, they don't deter, they don't punish and they don't protect".

The Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association in its project on the Minimum Standards for Criminal Justice and its Standards Relating to Sentencing, Alternatives and Procedures have passionately urged that sentencing be individualized and in so doing have stated:

"To individualize the sentence in the case of

> any specific offender means, first, to differentiate him from other offenders, in personality, character, socio cultural background, the motivations of his crime and his particular potentials for reform and recidivism and, secondly, to determine which among the range of punitive, corrective, psychiatric and social measures, is best adapted to solve the individualized set of problems presented by that offender in such a way as materially to reduce the probability of his committing crimes in the future." ("The Problems of Sentencing", page 63)"

This policy is consistant with the concept and theory underlying the enlightened conception of present sentencing procedures which is stated to be "treatment that fits the offender and not merely the offense". Clearly, in the face of all of the foregoing, the only treatment which could fit Mr. Lazarski would be, at the very worst, the imposition of a period of probation.

In the New York Case of People v. Silver (10 A.D. 2d 274; 274 N.Y.S. 2d 199) the Court in discussing sentencing policy and considerations stated in substance that the prime aim of socialized justice is a dispassionate and conscientious evaluation of the unique aspects of the convicted offender's total personality, his intelligence, his character structure, his demonstrated ability to conform, his capacity to accept our social disciplines and limits, and his overall stability. Such an inventory of his assets and liabilities is indispensable to a judicial determination in selected cases of whether accidental or situational offenders with promising potential can be aided to readjust to a normal life in the community without the disruptive, and sometimes destructive, effects of imprisonment.

The National Advisory Commission on Criminal Justice Standards and Goals has recommended:

> "Outright release of persons convicted of . . . nonviolent first offenses".

PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI

As this Court knows, Mr. Lazarski has never been convicted of any criminal offense of any kind other than the present one and most assuredly will never again involve himself in any criminal activity.

The President's Commission on Law Enforcement and Administration of Justice, in their task force report, stated:

> "The correctional strategy that presently seems to hold the greatest promise, based on social science theory and limited research, is that of reintegrating the offender into the community. A key element in this strategy is to deal with problems in their social context, which means in the interaction of the offender and the community. It also means avoiding as much as possible the isolating and labeling effects of commitment to an institution. There is little doubt that the goals of reintegration are furthered much more readily by working with an offender in thecommunity than by incarcerating him" (The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections 28, 1967)

The American Bar Association Committee on Standards for Criminal Justice has concluded

> ". . . probation is properly viewed as a sentence just like any other sentence. It is an attempt by society to impose a sanction which will accomplish its goals, just as any other sentence is designed to do. The fact that it differs from other sentences in that the defendant remains subject to a prison term if he does not comply with the conditions of his release does not suggest or require the need for confusing terminology." (ABA Project on Standards for Criminal Justice, Standards Relating to Probation 25 (Approved Draft 1970)

The Committee then concluded that probation was the preferred sentence:

> "Desirability of probation:
>
> Probation is a desirable disposition in appropriate cases because:
>
> (i) It maximizes the liberty of the individual while at the same time vindicating the authority of the law and effectively protecting

the public from further violations of the law;

(ii) it affirmatively promotes the rehabilitation of the offender by continuing normal community contacts;

(iii) it avoids the negative and frequently stulifying effects of confinement which often severely and unnecessarily complicate the reintegration of the offender into the community;

(iv) it greatly reduces the financial costs to the public treasury of an effective correctional system

(v) it minimizes the impact of the conviction upon innocent dependents of the offender."

(ABA Project on the Minimum Standard for Criminal Justice Standards RElating to Sentencing Alternatives and Procedures, Standards Relating to Probation, 27)

The National Council on Crime and Delinquency has recommended restitution, fines, conditional discharges or employment in public service or appropriate periods of probation except in cases of professional criminals, violent crimes and persistent dangerous offenders.

The National Probation and Parole Association in its "Guides for Sentencing" recommends the suspension of the imposition or execution of a sentence without probation in any situation where "apprehension and conviction have so thoroughly a corrective impact on the offender that supervision by probation is unnecessary".

This tidal wave of authority, carefully researched and studied, compelling probation in cases where the offense is non-violent and the defendant is capable of rehabilitation, grows day-by-day (New York State Division of Probation, Department of Correction, an Evaluation of Probation Success: A Study in Post-Discharge Recidivism (1964); The Results of Probation (L. Redzinowitz ed. 1958); J. Rumney & Murphy, Probation and Social Adjust-

ment (1952); M. Grunhut, Penal Reform 309-12 (1948); 2 Attorney General's Survey of Release Procedures: Probation (1939); Commission on Probation, Report on the Permanent Results of Probation, Mass. Senate Doc. No. 431 (1924); Scarpitti & Stephenson, A Study of Probation Effectiveness, 59 J. Crim. L.C. & P.S. 361 (1968); Davis, A Study of Adult Probation Violation Rates by Means of the Cohort Approach, 55 J. Crim. L.C. & P.S. 70 (1964); England, What is Responsible for Satisfactory Probation and Postprobation Outcome?, 47 J. Crim. L.C. & P.S. 667 (1957); Diana, Is Casework in Probation Necessary?, 34 Focus 1 (1955); England, A Study of Postprobation Recidivism Among Five Hundred Federal Offenders, 19 Fed Prob. (Sept. 1955), at 10; Caldwell, Preview of a New Type of Probation Study Made in Alabama, 15 Fed. Prob. (June 1951), at 3; Monachesi, A Comparison of Predicted with Actual Results of Probation, 10 Am Soc. Rev. 26 (1945); Hughes, An Analysis of the Records of Some 750 Probations, 13 Brit. J. Ed. Psych. 113 (1943); Gillin & Hill, Rural-Urban Aspects of Adult Probation in Wisconsin, 5 Rural Soc. 314 (1940); Menken, The Rehabilitation of the Morally Handicapped, 15 J. Crim. L.C. & P.S. 147 (1924).

Another advantage to the use of probation is the simple point of economy. It has been said that probation costs less than 1/10th of the cost of imprisonment (United States v. Frazier, 479 F. 2d 983 (Second Circuit, 1973)). If a cheaper system appears to be more effective, then should it not be used? (The American Bar Association Project on Standards for Criminal Justice, Standards Relating to Sentencing Alternatives and Procedures, Section 2.3 and Comment (e) at p. 73).

PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI

The American Bar Association Study has concluded that probation should be imposed unless the sentencing court finds that confinement is necessary to protect the public from further criminal activity by the offender or that the defendant is incapable of rehabilitation. Neither of those exceptions apply here

> "A sentence not involving confinement is to be preferred to a sentence involving partial or total confinement in the absence of affirmative reasons to the contrary" (The American Bar Association Project on Minimum Standards for Criminal Justice, Section 2.3 (c))

The National Advisory Commission on Criminal Justice Standards and Goals in discussing the preference for probation and a presumption in favor of probation points out that the conviction in and of itself contains punitive elements. There are formalized collateral disabilities and disqualifications ranging from loss of civil liberties to loss of employment or business opportunities. It cites with approval the President's Crime Commission conclusion that

> "Removing a man completely from a community may impede his successful reintegration later, and the atmosphere, associations, and stigma of imprisonment may reinforce his criminality" (President's Commission, the Courts, 15)

The same point may be stated in another way

> "The typical American State prison, as presently constituted, offers little more than repressive discipline, with here and there a dash of social and vocational education . . . With some exceptions, if a person is kept in a prison. . . for a long time, he tends to beome institutionalized, and less and less capable of social life. As a result, when discharge finally comes, many are less capable of living in society than when they entered. Many of them are much worse because whatever skills and industrial contacts they may have had have been lost. Even those who serve short sentences are devoid of friends or relatives and they are feared, shunned and discriminated against on every hand. . . It is no wonder that

> so many return to prison." (Slovenko, Crime, Law and Corrections, 568 (1966)
>
> "The Advisory Committee agrees with these observations, and would allocate to them a dominant position in the development of an approach to sentencing." (P. 72 of Commentary on ABA Standard)

The Advisory Committee therefore, concludes

> "That the starting point for every sentence should be probation or some other sentence not involving commitment or confinement." (ABA Standards RElating to Sentencing Alternatives and Procedures, Section 2.3(e), Committee Commentary at p. 72)

The Committee points out that the Model Penal Code takes a very similar position in Section 7.01 where it is provided that

> "The Court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for the protection of the public."

The Advisory Committee then concludes that it is

> "Thus convinced both that sentences which do not involve imprisonment are more likely to be effective in the vast majority of cases and that such sentences represent a great deal less in public expenditures" (id. at p. 73 of commentary)

The primary justification for a prison term is the protection of the public (American Bar Associations Project on Minimum Standards for Criminal Justice, Standards Relating to Sentencing Alternative and Procedures, Section 2.3 (b), commentary at p. 63). Obviously, there is no need for that here.

The deleterious potential of a prison experience is completely unwarranted in the face of the nature of the man that Mr. Lazarski is and in view of the isolated, aberrant and first nature of the

offense. Clearly, in this case, prison is not needed to and will not rehabilitate. Prison is not needed to deter.

Milton G. Rector, the President of the National Council on Crime and Delinquency on October 2, 1973 in discussing a sentence imposed upon Jack L. Clark who plead guilty to bilking investors in his company, The Four Seasons Nursing Centers, of some two hundred million dollars out of which he made a personal profit of approximately ten million dollars, stated, in meeting the criticisms directed to the sentence imposed upon Mr. Clark, that

> "What would be just? A five year sentence or ten to twenty years? None of these would be. Clark is not dangerous and he ought not to be in a prison. But he ought to be working full speed to pay back the people he defrauded - and with interest - through a long term probation and restitution plan. And he should pay a whopping fine to the government, say in the order of two million dollars. That would be a deterrent to others like Clark."
>
> "Similarly, for the street criminal who is not dangerous, restitution to the victim, fines and employment in public service are better sentences than terms in prison. There is nothing to commend wasting an offenders time and tax payers money in the vain hope that it will rehabilitat. It won't."
>
> "It's high time we got sensible about sentencing criminals".

The National Advisory Commission on Criminal Justice Standards and Goals as part of its two year study stated:

> "Penitentiaries should be reserved for only hard core criminals and many offenders should go free with no more punishment than arrest and trial.

As was stated at another time and another place but under similar circumstances

> "Not the king's crown, nor the deputed sword, nor the marschall's truncheon, nor the judge's robe, become them with half so good a grace as mercy does."

PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI

Under all of the circumstances, if any punishment at all is to be imposed upon Mr. Lazarski beyond the incurable penalty of being stigmatized for life with a criminal record that punishment should be nothing more than probation. Peter Lazarski with the exception of this isolated misdeed has been a credit to his community, to his family and to the schools which he has attended. He is clearly not a danger to society nor is he a candidate for recidivism. It would be inhumane, unfar and injust to imprison him under the circumstances.

COMPARATIVE SENTENCES

Cases involving felony drug sale and possession convictions supporting the imposition of a probationary term are People v. Mahiques, 363 N.Y.S. 2d 178 (Criminal Possession of a Dangerous Drug in the Third Degree); People v. Young, - A.D. 2d - , Appellate Division, Fourth Department, 12/5/74, plea of guilty to a Class D Felony arising out of criminal possession of a controlled substance; United States v. Schwarz, - F. 2d - , Second Circuit Court of Appeals, decided July 23, 1974, possession with intent to sell cocaine. (see also, People v. Edwards, 369 N.Y.S. 2d 493 reducing a prison term of three years upon a conviction for bribery to five years probation - Appellate Court also held that the trial court abused its discretion in predicating its sentence, in part, on the basis of a prior arrest record; People v. Bennett, 361 N.Y.S. 2d 37, Appellate Division, Second Department, vacates jail sentence and remands for a sentence of five years probation upon a conviction of assault in the second degree; People v. Pabon, 49 A.D. 2d 720, criminal possession of a dangerous drug, fourth degree, sentenced to an indeterminate term not to exceed

five years vacated and a sentence of probation imposed; People v. Piacentine, - A.D. 2d - , Appellate Division, Second Department, February 18, 1975, 364 N.Y.S. 2d 541; Criminal Possession of a Dangerous Drug in the Sixth Degree, sentence of six months vacated and a period of probation for one year imposed).

The Constitutional Doctrine of Equal Protection of the Laws certainly does not permit Mr. Lazarski to be treated any more harshly than these individuals.

CONCLUSION

Mr. Lazarski's life, his work, his accomplishments and all of the testimonials embodied in the letters appended to this Memorandum, cannot, at this critical moment in his life, be ignored and in all fairness and justice, cannot be permitted to be all for nought. It is respectfully submitted that the Court in weighing the sentence to be imposed must consider the full range and spectrum of the life of Mr. Lazarski and his potential and not simply the isolated instance of his involvement in a criminal enterprise. Peter Lazarski presents a unique and compelling case for the imposition of, at the very worst, a sentence of probation. The objectives of justice can best be fulfilled by the Court's recognizing that severe punishment and shame have already been heaped upon Mr. Lazarski as a consequence of his conviction and the criminal record itself and that if any further punishment is to be imposed, it should be probation.

Respectfully submitted,

E. STEWART JONES, JR.
Attorney for defendant
28 Second Street
Troy, New York 12181

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - RESUME OF DEFENDANT LAZARSKI

Peter M. Lazarski
139 Cook Avenue
Syracuse, N.Y. 13206
Phone: 315-472-3929

Personal Data:

Date of Birth:	24 March, 1951
Height:	6' 3½"
Weight:	175 lbs.
Marital Status:	Single

Professional Objective: Career in chemistry

Education: B.S. Chemistry, May 1974, Rensselaer Polytechnic Institute, Troy, N.Y.

Experience:

9/74 - 1/76 Chemistry Lab Technician @ Hudson Valley Community College, Troy, N.Y.
I provided chemicals, special reagents, unknowns, and equipment for all experiments; ran some new experiments for the instructors prior to assignment; kept a running inventory of chemicals and glassware in stock; disposed of chemical wastes; and also handled money in the form of student breakage fees, and laboratory supplies.

9/73 - 2/74 Lab Technician @ Bristol Laboratories, Syracuse, N.Y.
I performed Karl-Fischer water analyses; prepared samples for and operated computer-monitored autoanalysers and gas chromatographs; ran samples on an IR spectrometer; and prepared autoanalyser reagents.

4/73 - 8/73 Grinder and Inspector @ Crucible Steel, Solvay, N.Y.
As a grinder, I cleaned surfaces of metal bars with a grinding machine (4-6/73). As an inspector, I supervised 5-7 grinders and kept record of amount of work done by each man.

References: References will be furnished upon request.

BEST COPY AVAILABLE

The Trustees of

Rensselaer Polytechnic Institute

Upon nomination of the faculty

confer on

PETER MICHAEL LAZARSKI

the degree of

BACHELOR OF SCIENCE

in

CHEMISTRY

Given under the seal of the Institute, Troy, New York

this thirty-first day of May one thousand nine hundred and seventy-four

Richard J. Gould
President

[illegible] Jr.
Secretary

One hundred fiftieth Anniversary Year Class

RENSSELAER POLYTECHNIC INSTITUTE 1824

A-441

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - DEFENDANT LAZARSKI'S BACHELOR OF SCIENCE IN CHEMISTRY DEGREE

A-442

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

GR 8-5109

APR 28 1976

ST. JOHN THE BAPTIST
Ukrainian Catholic Church
207 TOMPKINS STREET
SYRACUSE, N. Y. 13204

April 27, 1976.

To whom it may concern:

I, as the pastor of St.John the Baptist Ukranian Catholic Church, Syracuse,N.Y ., have know Mr. Peter M. Lazarski for many years. I have know him to be an honest man with good morals and he is a practicing Catholic in good standing in this parish.

St. John the Baptist Ukrainian Catholic Church
Syracuse, New York

Sincerely yours,

Msgr Bas Seredowych

Rev. Msgr. Basil Seredowych
pastor

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

JAMES M. HANLEY
32ND DISTRICT, NEW YORK

WASHINGTON OFFICE:
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CODE 202: 225-3701

SYRACUSE OFFICE:
370 FEDERAL BUILDING
13202
CODE 315: 473-5657

Congress of the United States
House of Representatives
Washington, D.C. 20515

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SBA OVERSIGHT AND MINORITY ENTERPRISE
SBA AND SBIC LEGISLATION

May 26, 1976

Honorable James T. Foley
Chief Judge United States District Court
Northern District of New York
Federal Building
Albany, New York

Dear Judge Foley:

Mr. Peter M. Lazarski, 139 Cook Avenue, Syracuse, New York 13206, has asked me to provide a character reference letter.

I have known Peter and his family for approximately twenty years and to the best of my knowledge, with exception of the present charge, Peter has been an outstanding citizen. He is a 1974 graduate of RPI where he worked his way through college. I have been a friend of the family for many years and can vouch for Peter's good character and outstanding work habits.

It is my understanding that this is the first difficulty that Peter has ever experienced and I am certain that he has learned his lesson.

Any consideration consistent with your regulations that could give Peter another chance to lead a meaningful life would be greatly appreciated.

If you have any further questions regarding this matter, please feel free to contact me.

Sincerely,

James M. Hanley

JAMES M. HANLEY
Member of Congress

JMH:mh

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EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

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ADMINISTRATIVE ASSISTANT

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33D DISTRICT, NEW YORK

Congress of the United States
House of Representatives
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315 252-2222

484 SOUTH MAIN STREET
GENEVA, NEW YORK 14456
315 789-3360

May 21, 1976

Honorable James T. Foley
Chief Judge
United States District Court
Northern District of New York
Federal Building
Albany, New York

Dear Judge Foley:

I am writing this letter on behalf of Peter M. Lazarski, who I understand is soon to come before you for sentencing on a charge of conspiracy to sell drugs.

I want you to know I have been acquainted wich Peter and his family for many years, and I have never had any reason not to regard them with anything less than high personal character.

His father, Ignatius P. Lazarski, has risen through the ranks of the Syracuse Fire Department to the position of District Chief. I had the pleasure of promoting him to Captain and to District Chief during my two terms as Mayor of Syracuse.

His son Peter was employed by the City over several summers during my administration. Peter has had an outstanding record as a student and as an emplcyee with various area firms, and since his graduation with a degree in Chemistry from Rensselaer Polytechnic Institute has been on the staff of Hudson Valley Community College in their Chemistry Laboratory.

I understand the laboratory is anxious to reemploy him when the pending case has been settled and if he is then free to accept employment. While the case has been pending, he has been steadily employed in Syracuse.

In my opinion, the interests of justice and of society would best be served if Peter Lazarski were considered an outstanding candidate for probation, based on his background, on his otherwise perfectly clean record and on his potential as a productive law abiding citizen in the future.

With my best personal good wishes.

Sincerely,

William F. Walsh
Member of Congress

WFW/rhf

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EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

(1)

JUN 10 1976

June 1, 1976

Gentlemen:

I have known Peter Lazarski since 1971.

Originally we were simply apartment mates, later we became very close friends. As I shared an apartment with Peter and six other students, I feel qualified to give an apt impression of his character.

Peter is a very warm, sensitive and sincere human being. I think an important element contributing to our friendship lies in the fact that both of us share a strong interest in the dramatic arts, music and film. This is not a common area

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

interest among most students of a science and engineering orientated University such as R.P.I.

Peter was, in fact, the person that introduced me to the idea of getting a radio show with WRPI. Because Peter had a show at the time, he made it possible for me to meet the manager of the station and arrange for what was to be, a successful audition. I am personally grateful for his interest and helpful intercession on my behalf at that time.

Peter also tutored me in math during my sophmore year. He has always been patient in readily explaining any mathematical or chemical equation to myself or any of my friends having difficulty in those subjects.

During my senior year I was responsible for the

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

(3)

Film Series at Russell Sage College. Peter not only helped me select and order the films but was of vital assistance in our inter-campus advertising (ie. printing posters & putting them on both campuses, handing out flyers). On several occassions he was called upon to run the projector.

He also helped me in the paperwork and planning of orientation seminars for the Intercultural Studies Center.

Peter has shown me great understanding in matters both personal and academic. He was present at the time I was notified that my mother had suffered a heart attack.

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

(4)

He proved a source of great strength and moral support throughout this crisis.

As long as I've known Peter he has held down a job to pay for his schooling. He has always been a hard worker; sometimes holding more than one job in addition to attending classes.

In spite of a very tight schedule Peter has invariably found the time to help his friends by providing transportation, and allowing friends to stay in his apartment during school vacations.

I believe these are all important indications of Peter's basic goodness and sympathetic qualities.

I was distressed to learn of Peter's indictment. I would consider it a moral injustice and a great error

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

(5)

is a young man of
Peters character and
integrity was forced to waste
a number of years in
prison because of an isolated
and tragic mistake on his
part. I believe he should
be allowed the opportunity to
prove himself as an up-
standing and productive
member of the community.

Sincerely,

Gideon L. Kay

(9)

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

MAY 28 1976

HUDSON VALLEY COMMUNITY COLLEGE

Troy, New York Telephone (518) 283-1100

James J. Fitzgibbons
PRESIDENT OF THE COLLEGE

May 21, 1976

Re: Peter Lazarski

To Whom it may concern:

We, the undersigned, have known Peter Lazarski for three semesters (1 year, 4 months) as an employee of the Technical Services area at Hudson Valley Community College. While he has not prepared materials directly for any of us, our observations of him at work and comments from our colleagues indicate that he is an excellent chemist. We feel that he can be a productive and law abiding citizen and member of the community.

Thomas Allen Jr.
Assistant Professor

James J. LaGatta
Assistant Professor

John H. Nickles
Associate Professor
Chemistry Department

A-451

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

MAY 27 1976

Department of Chemistry
Hudson Valley Community College
Troy, New York 12180
May 26, 1976

To whom it may concern:

I have known Mr. Peter M. Lazarski for about a period of two years when he worked as a Chemistry Technician at Hudson Valley Community College, Troy, New York. I am employed in the same college as an Associate Professor in the Department of Chemistry. During that period, I have found Mr. Peter Lazarski to be conscientious, intelligent and efficient. As a chemistry technician in the college, he performed all his duties diligently.

Very truly yours,

C.R. Surapaneni
Associate Professor

EXHIBIT T[illegible]RE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

MAY 27 1976

HUDSON VALLEY COMMUNITY COLLEGE

Troy, New York Telephone (518) 283-1100

James J. Fitzgibbons
PRESIDENT OF THE COLLEGE

May 21, 1976

E. Stewart Jones, Jr.
28 Second Street
Troy, N.Y. 12181

To Whom It May Concern:

During his employment at Hudson Valley Community College Peter Lazarski was responsible for preparing many reagents that I used in teaching several chemistry laboratories. At times we would work together in preparing and assimilating these reagents, and I always found Pete to be a diligent and conscientious worker.

Along with everyone else I was surprised to learn of the situation that he was involved in, and I do suspect strongly that this was a tragic mistake.

Sincerely yours,

Richard Fennelly

Richard Fennelly,
Assistant Professor

RF/m

A-453

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

JUN 1 1976

27 May 1976

TO WHOM IT MAY CONCERN:

Peter Lazarski has been known to me since August 1974.

During this period of time Peter was employed as a Chemistry Technician under my supervision.

I found Peter to be an avid Chemistry person - always interested in it and willing to spend extra hours to solve a problem or complete a complicated solution.

I never had any reason to question his loyalty or eagerness to do a good job. His honesty was never in doubt. Peter and I had a couple of discussions about work habits, i.e. neatness and promptness, but nothing really serious. At the time of his leave of absence, I felt that Peter had matured in that respect and had a more responsible approach to this.

Peter had developed a good relationship with the instructors and students plus his co-workers. As I mentioned, Peter devoted extra hours to the complicated formulas of the advanced courses. This was not a specific requirement of his job description but was a trait which was "above and beyond." His advice was frequently sought.

While I do not have a long acquaintance with Peter, I must admit I was completely shocked by this mistake. My thought would be that Peter, although he knew of the consequences, did not relate them to himself nor realize the full extent of them.

Peter is certainly a well-above average person - very intelligent and a gentle person.

Sincerely yours,

Jane S. Gorzelnik

(Mrs) Jane S. Gorzelnik
Coordinator of Technical Processing

A-454

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

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GENEVA, NEW YORK 14456
315 789-3360

Congress of the United States
House of Representatives
Washington, D.C. 20515

May 21, 1976

Mr. Frank Waterson
Probation Officer
United States Department of Probation
Federal Building
Albany, New York

Dear Mr. Waterson:

I am writing this letter on behalf of Peter M. Lazarski, who is soon to appear for sentencing on a charge of conspiracy to sell drugs.

As a lifetime resident of Syracuse, I have known the Lazarski family for many years. I can attest to Peter's character, to his fine school record, and to his achievement in his chosen profession in the field of chemistry.

I understand that Peter's sentence will be determined in part on the basis of his past, as well as on his future, and it is my belief it would be beneficial for him to be considered strongly for probation.

If I may be of any further assistance or may offer any additional support comments about Peter Lazarski, please don't hesitate to contact me.

With best wishes.

Sincerely,

Edward Horstmann

Richard A. Horstmann
Executive Assistant

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RAH/mgf

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EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

May 25, 1976

To Whom It May Concern:

We have known the family of Peter M. Lazarski approximately 15 years. We have become good friends during this time and hold them in high esteem.

Our opinion of Peter over the years has been only the best. We have been aware of his interests, initiative and school achievements. We know that he was a boy scout, a paperboy and he played in Little League. We recall seeing his picture in the paper for a science award; and we also recall that one of his instructors, now deceased, presented him with equipment (as encouragement) to continue his work.

Peter has always been a perfect gentleman; and as adults, we have always been impressed with his behavior, whether in his home or ours, or the many times we had occasion to see him in church or elsewhere.

Metro Procanick

Financial Specialist
General Electric Co.

Helen Procanick, SPN

MP:hh

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

JUNE 5, 1976

TO WHOM IT MAY CONCERN:

I have known Peter M. Lazarski for approximately fifteen years. I became acquainted with him through Lincoln Little League, which I helped organize and have served in various official capacities, since it's origin, 26 years ago.

Peter was the type of young man that made working woth young people a rewarding experience and pleasure. After graduating from Little League, he still made himself available in assisting to make Little League successful by working at the field preparations and opening day affairs.

I had less contact with him the last five years since he went away to school, meeting only occasionally during his visits home. I was surprised and shocked to find the position he had placed himself in, at the present time, but I sincerely believe, if he is given another chance, he will turn out to be a credit to his family, his friends and society.

Sincerely,

RUSSELL MANGICARO
600 ELM STREET
SYRACUSE, N.Y.

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

April 25, 1976

To Whom It May Concern:

This statement concerns my nephew Peter Richard Lazarski, who I have known since he was born and consider him to be a fine upstanding young man.

Peter has a very close relationship with his family. His love and respect for his parents, brothers and sister are constant. He attends church regularly and is polite, considerate and of good character.

His record at school throughout his college days proved him to be a hard worker and always striving to get the best out of everything that he undertook. I strongly believe it to be doubtful, even though he has made a very serious, tragic mistake.

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EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

. . .

I realize he is very new to having a part in this affair and realizes the value it will affect his life now and in the future.

I give another chance & have faith in him that he can and will prove himself worthy of our trust and become a productive, law-abiding citizen of the community. He certainly has the education and potential to do so.

Please consider his situation carefully.

Sincerely yours
Irma Kiptak

P.S. It may be of no importance but just mentioning I have known Thirty-three and one half years for Irma. Resides in Syracuse, N.Y.

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

May 26, 1976

MAY 28 1976

To Whom It May Concern,

I am writing reference to the Case of Peter Lazarski Vs. U.S.. I have known Peter for approximately one and one have years. I met him at work and our friendship was maintained there. Peter always had a good attitude at work and was quite enjoyable to work with. He did his job well and never hesitated to lend a hand when someone else needed help. Peter was also a responsible person.

After his arrest, I didn't see him again until a few weeks ago when he came to ask me to write a personal reference. I spent an hour with him discussing the whole situation. I honestly believe that his getting involved was a mistake. I also believe that pete realizes this too. I seriously doubt that he would ever do the same thing again. The whole situation has really enlightened him to the full consequences and this I believe is enough to make a person walk the straight and narrow.

I hope this letter has been a help to you and thank you very much for your time.

Sincerely

Craig Engel.

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

May 26, 1976

MAY 28 1976

To Whom It May Concern,

I am writing reference to the Case of Peter Lazarski Vs. U.S.. I have known Peter for approximately one and one have years. I met him at work and our friendship was maintained there. Peter always had a good attitude at work and was quite enjoyable to work with. He did his job well and never hesitated to lend a hand when someone else needed help. Peter was also a responsible person.

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I hope this letter has been a help to you and thank-you very much for your time.

Sincerely

Craig Engel.

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

MAY 14 1976

To whom it may concern,

I worked with Pete Lazarski for a year and a half before he arrest.

I was shocked when I heard Pete was arrested because from times I had a chance to talk to Pete he seemed to be an intelligent and responsible person.

I still feel Pete has a lot to contribute if he puts his knowledge to more productive use.

Thankyou.

Sincerely

Helen R. Connor

A-462

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

MAY [illegible] 1976

21 May 1976

To whom it may concern:

I was in frequent contact with Peter M. Lazarski from September 1975 until he was arrested. At the time I was teaching chemistry at Hudson Valley Community College and he was in the chemical stockroom. The course I was teaching was Quantitative Analysis, which requires large volumes of solutions which must be carefully prepared. The solutions he prepared were well made, and frequently, if we ran out of solutions, he would prepare extra solution, although he was not required to do so. Occaisionally an experiment would run later than was scheduled; at such times Peter would stay late without complaint, and in general he was very accomodating.

His arrest came as a complete surprise to me. Based upon conversations we have had since he was arrested, I have become convinced that he has certainly learned his lesson and will not do anything illegal in the future.

Sincerely,

William C. Hoyt

William C. Hoyt

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

MAY 17 1976

Gilliam IV Apts
Apt 123
29 Morrison Avenue
Troy, New York 12180
May 14, 1976

Law Offices - E Stewart Jones Jr.
Jones Building
28 Second Street
Troy, New York 12181

To Whom it may Concern:

On Monday May 10 1976, Pete Lazarski spoke to me about the possibility of supplying him with a character reference

I have known Pete for approximately one and a half years mainly as a coworker although we have met on a couple of social occasions. Therefore, most of my impressions of Pete were formed in a work context.

As a coworker I found Pete to be extremely helpful with problems which arose at work that I was unable to find a solution for on my own. In this context, I always felt that Pete's job was beneath his capabilities. He seemed to take pride in his work, never complaining about any work which had to be repeated for some reason. He always was quite ambitious

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

Pete was always pleasant to talk with, offering the appropriate sympathy or suggestions for any personal problems which may have come up in conversation.

As far as Pete's personal habits were concerned he seemed to me an individual all the way. By this statement I refer to his style of dress, choice of TV programs (as refered to in conversations) and taste in music. Also, I have yet to meet another person with even a similar sense of humor and ability not to let work related pressures get him down.

Since my conversation with Pete on May 10, 1974 - I feel he fully realizes how foolish he was to even begin the whole incident for which he now faces sentencing.

Sincerely,
Kathryn L Kane

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

Ian J. Wiltshire, Ph. D.
6-2A Riverhill Apartments
Menands, New York 12204

May 19, 1976

To Whom It May Concern:

I have known Mr. Lazarski since he was first employed as a chemical technician in September 1974 and in my capacity as chairman of the Chemistry Department, I was able to observe Mr. Lazarski from day to day working on laboratory preparations for chemistry courses.

He carried out his work efficiently and thoroughly and whenever he had excessive amounts of work to do, he was quite prepared to stay behind to finish the assignments. He is an intelligent young man and was always ready to make improvements in his work and offer suggestions to others when appropriate. Mr. Lazarski got on well with the faculty of the Department and always seemed eager to satisfy their sometimes short noticed requests.

Sincerely,

Ian J. Wiltshire

Ian J. Wiltshire, Ph. D.

IJW/m

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT LAZARSKI - CHARACTER REFERENCE LETTERS

May 18, 1976

TO WHOM IT MAY CONCERN:

This is written in reference to Mr. Peter Lazarski. I was first introducted to Peter when he had accepted a position with our department about two years ago, where I had acted as his indirect supervisor.

Peter had been chosen for the position due to his background and education and in my estimation Peter knows his subject matter very well, he does an excellent job and I consider him to be very bright.

During Pete's period of employment I found his work to be careful and accurate. He is enthusiastic about what ever task he is performing and willing to devote as much time and energy as is necessary to have things done to perfection.

I have found Mr. Lazarski to be an excellent employee, he is reliable, conciencious and is always willing to help in other areas when called upon.

His attendance has been good with only a slight problem with tardiness. He has been flexible and willing to meet the needs and demands of his position.

Mr. Thomas Maychack

PRE-SENTENCING MEMORANDUM OF DEFENDANT LEE

Dft'g Memo - June 19, 1976
Read Judge Foley

RECEIVED
JUN 17 1976
U. S. DISTRICT JUDGE
ALBANY, NEW YORK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

Indictment No. 75 CR 166

PETER M. LAZARSKI,
CRAIG L. NEWMAN,
NEIL B. WINNER,
YOK LEE, and
MARK McDONALD

DEFENDANT'S SENTENCING MEMORANDUM

Defendant Yok Lee

This Memorandum has been prepared and is respectfully submitted by David S. Michaels, counsel for defendant Yok Lee, in preparation for sentencing before the United States District Court for the Northern District of New York. It is based upon the information provided by the defendant to counsel in extensive discussions.

FAMILY

Yok Moon Lee was born on July 10, 1951, in Hong Kong and he is now twenty-four years old, single, and a 1975 graduate

of Rensselaer Polytechnic Institute. His parents had been born and were married in China in 1949 where his father was a graduate of Canton University. Shortly after their marriage, defendant Lee's parents fled from China to Hong Kong were Yok was born, and his father came to the United States to work and prepare a new life while Yok and Mrs. Lee remained temporarily in Hong Kong. After two years the family was reunited here and they lived in Chinatown, New York City, where the defendant grew up and where he and his entire family still live. His father is a waiter in a restaurant; his mother, Sui Ken Lee, is a dressmaker, and his twin younger sisters, Linda and Doreen, are a nurse and a secretary respectively. The Lees are naturalized United States citizens, and both Chinese and English are spoken in the Lee home, as Mrs. Lee speaks little English, but Yok and his sisters are bilingually fluent. No member of the family has ever been in any difficulty with the law.

EDUCATION: PART-TIME and SUMMER EMPLOYMENT

As a teenager, Yok Moon Lee attended Brooklyn Technical High School in Brooklyn, New York, a selective school known for

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the excellence of its technical and scientific preparatory education, after which he attended Rensselaer Ploytechnic Institute, in Troy, New York, from which he received his B.S. (geology) in May of 1975. Important courses outside his major field included specialized areas of mathematics, physics, engineering sciences and technical writing.

In the final year and a half of his education in the Troy area, Yok worked for Creative Medica, Inc., performing all aspects of television commercial production, including camera work, directing, lighting, animation and script, and he also prepared and produced filmed coverage of sporting events for television use. In addition, during his last semester at RPI he was a regional representative for the Northern New York State area for the Arrow Electronics Company of New York City. It is the understanding of counsel that a letter of reference from the then President of Creative Media, Inc., praising his work, honesty and conduct in his position, and a letter of reference from the President of Arrow Electronics have been sent to the Department of Probation.

POTENTIAL AND CHARACTER

During his college education Yok has lived at three addresses in Troy, New York, on Washington Place and Second

PRE-SENTENCING MEMORANDUM OF DEFENDANT LEE

Street, and counsel has been informed that a letter from his landlady at his most recent address, 169 Second Street, Troy, New York, has been provided to Probation to demonstrate that he was an entirely desirable tenant and a good neighbor who lived in an orderly and quiet manner and who performed particular acts of honesty and gentlemanly concern which impressed his landlady as showing character and sound values.

In the opinion of counsel, the potential that this defendant has to make a genuine contribution to society stands out strikingly from his academic record. The concern that his family has had for education and intelligence stands out from his family history, and letters of praise and reference from his professors attest to his ability to fulfill this promise. He loves sports, plays the banjo, and seems oddly patriotic to counsel (himself an unreconstructed anti-Vietnam civil libertarian.) A high level of accomplishment in his work and conduct showing honor and honesty were all traits that he displayed long before his arrest, on December 19, 1975. Counsel can report of his certain personal knowledge that this defendant has conducted himself throughout these proceedings, and before this Court, in a manner which again demonstrates these qualities and those of

courage as well. He is now working as a realty trainee for Sholon & Zuckerbrot Realty Corp. of New York City, but he acknowledges that the pendency of this case has made it terribly difficult for him to concentrate on the difficult job of choosing and developing a lifetime career.

IMPACT OF THIS PROSECUTION ON THIS DEFENDANT

This case has been Yok's first encounter of any kind with the law, and his sensitivity to the ethical complexities of his situation and to the possibility of incarceration have made this prosecution a life-shattering event. It has been hard for him to turn to his family for help, and to return to their house to live has been a severe and upsetting setback to him, and the effect of this case in bringing disgrace and shame to himself and his family have had a tremendous effect that counsel can readily observe. Of course, the fact that this case constitutes the first contact that Yok Lee and his family have ever had with criminal law, in any context, has made his arrest, prosecution and conviction upon plea all the more staggering.

PRE-SENTENCING MEMORANDUM OF DEFENDANT LEE

COOPERATION : NATURE OF DEFENDANT'S ROLE

The defendant Yok Lee has not only confessed his guilt as a co-conspirator and has not only pleaded guilty before this this Court, but in addition, he has cooperated with the Drug Enforcement Administration in providing accurate and honest information and in performing a certain act to prevent similar acts by others in the future, which counsel feels must be of significant consequence to the Government. It should further be noted that with respect to the criminal act here that this defendant's role, while acknowledged, while admittedly criminal, was arguably somewhat less critical than that of certain others. This defendant had little of the key knowledge and central expertise essential to the conspiracy's goal here. The actions performed and completed by this group of young men were, it is submitted, not of a grand quantitative magnitude; proposed acts of greater consequence were "nipped in the bud" by a combination of the amateurish naivete of the defendants and the alert stance of the agents and chemical company employees. Nevertheless, the defendant has made clear his belief that his willing assistance and his failure to terminate criminal acts here, at the very least, make him equally responsible in the sense he finds most significant.

PRE-SENTENCING MEMORANDUM OF DEFENDANT LEE

THE SUBSTANCE METHACQUALONE

Methacqualone, or Quaalade, only recently added to the schedules of controlled substances, bears no resemblence to Methamphetamine, but is a mild hypnotic and relaxant which has substantially less overdose potential and far less addictive liability than barbiturates. It is widely prescribed by physicians and it also has an illicit following (chiefly among college students) for recreational use instead of alcohol. It can be dangerous if abused, but is considered less dangerous than many other substances in normal use. Documentation of this description of the substance will be provided upon request.

DEFENDANT'S CONTRITION AND COUNSEL'S OPINION

It is the firm opinion of counsel that this defendant is sincerely contrite and in fact terribly distraught over what he did and over what has happened here. Such contrition is not only conditioned upon the present realities of his situation but upon the nature of the original act and his deep regret therefor. In conversations with counsel he has spoken movingly of his panic and desperate pacing of the jail cell floor when he was locked in a jail cell soon after his arrest.

PRE-SENTENCING MEMORANDUM OF DEFENDANT LEE

Yok's anger and disgust at himself and his feeling of complete disgrace present clearly the case of a young first offender, a student barely out of school, with proven talent but little experience in the world. who joined a small group of school friends in a prankish idea which got out of hand, to mix up a batch of chemical "home brew". Yet for the rest of his life, regardless of the sentence of this Court, the various events of U.S. v. Yok Lee will form an essential watershed, a dividing line between the end of student life and the completion of growing up. The inevitably harsh conditions of jail would be, I submit, extremely and even unduly harsh for Yok. Both pshychiatrically and physically, a jail sentence could well destroy Yok Lee. I submit that here, incarceration would be unnecessary and destructive, and hence, under all the circumstances, unjust. Yok Lee, in counsel's honest opinion, is a fine youg man, worthy of consideration as a young adult offender, worthy of the trust of this Court in determining, as counsel urges, that probation here would be very likely to be entirely successful.

CONCLUSION

Counsel implores this Court to give due consideration and great and substantial weight to the youth of this defendant

his less than central role in this conspiracy, his status as a first offender, and his sincere contrition and cooperation, and I implore the Court to act mercifully in determining that this defendant shall have one chance, one opportunity to serve his sentence on probation and not behind bars.

Respectfully submitted

David S. Michaels

DAVID S. MICHAELS
Attorney for Defendant Yok Lee

PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

MARK MC DONALD,

Defendant.

DEFENDANT'S PRE-SENTENCING MEMORANDUM

CR. NO. 76-CR-15

PRELIMINARY STATEMENT

This pre-sentence memorandum is prepared and filed pursuant to Rule 32 of the Federal Rules of Criminal Procedure as a supplement to the pre-sentence. Report prepared by Probation Office of this Court. Copies shall be provided to the Court, the Probation Department and the United States Attorney's Office. The memorandum includes the following:

I. DEFENDANT'S BACKGROUND AND FAMILY:

Mark Mc Donald was born on October 3, 1951, in Freeport, New York. His childhood years were spent in many different locales due to his father's ambitious business pursuits. He has two older brothers; William Mc Donald, who is six years older, and Bruce Mc Donald, who is several years his senior. Mark Mc Donald did not have the opportunity to establish close ties with his oldest brother because when Mark was six months old, William went away to prep school. Today William is married, has two children, and is a Captain in the Air Force, stationed

in Omaha, Nebraska. Bruce and Mark, on the other hand, enjoyed and still enjoy a close relationship. After his arrest Mark spent much time with Bruce and his family, receiving substantial personal support from them. Bruce presently works for Johnson and Johnson in New Jersey, but the two (Mark and Bruce) anticipate the possibility of a joint business venture in the near future, should the sentence of this Court permit the defendant to remain at liberty.

Mark's father worked for several of the major soft drink bottling companies during his lifetime. He was originally trained by the Coca Cola Company. After owning and operating a small bottling company for several years, he worked his way up from an employee to the position of ce president and manager of several other plants. Before Mark finished high school, he had lived in a total of seven different areas. Mark's father died when Mark was a junior at RPI in 1968.

Mark's mother, who is now 69 years of age, lives in Walpole, New Hampshire. In past years she worked as a substitute teacher upon occasion. Mark relates that she is not in good health at this time and he believes she would suffer greatly from the shock and emotional upset of the full knowledge of Mark's present situation. For this reason Mark has kept her unaware of his plight, and has requested that she be excluded from pre-sentence considerations.

During Mark's childhood hears, he enjoyed the company of two sets of grandparents. For the first 15 years of his life, he spent his summers with them. His last

PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD

surviving grandparent, his maternal grandfather, died this past year leaving Mark and his brothers as residuary beneficiaries and appointing Mark and Bruce as administrators. As a result of these proceedings, Mark has begun personally repairing, repainting and generally rehabilitating a summer house on Long Island which is an asset of his grandfather's estate. Mark is still actively involved in the estate and tax proceedings.

II. EDUCATION AND EMPLOYMENT HISTORY:

Mark Mc Donald's school career was never marred by problems, either of a disciplinary or academic nature. He attained outstanding grades in high school and college. His interest in applied sciences led him to RPI where he received both a B.S. and a M. S. degree in Geology. He considered going on for a Ph. D. because it would enable him to teach at the college level. However, the high cost of tuition, thus far, has held him back.

Mark has always been an industrious worker. At age 16 he began taking summer jobs. He worked for the first six years as a warehouseman, a production line worker, a vendor at a Pepsi-Cola plant, and finally as a researcher for the New York State Geologic Survey. He expanded this last job into a year-round part-time job during his last year at R.P.I.

In October 1974, after Mark Mc Donald earned his M. S. degree he was awarded a grant from NASA. During the same time period he also began selling stereos and calculators by telephone for an out-of-town company with the idea in mind of

accumulating tuition money for further advanced degree work in Geology. In February, 1975, before his arrest, Mark discontinued the high flight aerial interpretation work he was performing under the NASA grant. He stated that he felt at the time that he needed the challenge of independent study for its motivation value, as contrasted with the NASA position, which involved boring, repetitive and thoroughly academized endeavors. Even before his graduation, Mark was aware that even the highly-prized jobs with southwestern oil companies might not offer him the challenge that he had found in his continued studies.

Since leaving Troy subsequent to his arrest, Mark has worked as a substitute teacher of mathematics and science at a high school in Kingston, Massachusetts. Mark also taught as a substitute in 1974, while still engaged in his studies at RPI, in the Troy school system. Mark finds teaching both stimulating and challenging.

It should perhaps be emphasized that although Mark has been and will probably be involved in renovation work upon his grandfather's house for a period of some months, he has neither sought nor received any salary or commissions from the estate. Mark relates that the work gives him relief from the anxiety and uncertainty of what may lie in store for him at the hands of this Court.

Should the Court's judgment permit him to so choose, Mark would probably involve himself in a business venture

PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD

offerred to him by his brother, Bruce. He admits that his foremost desire is to return to school for his Ph. D. However, he feels that his criminal record will effectively preclude him from admission into a Ph. D. program.

III. CRIMINAL RECORD:

Mark Mc Donald has never been previously arrested for or convicted of a criminal offense.

IV. MITIGATING CIRCUMSTANCES IN CONNECTION WITH THE INSTANT OFFENSE:

At the outset of this section, it should be pointed out that the factual matter set forth is not intended to contradict o supercede any statements given by Mark Mc Donald directly to the Probation Office or to the D.E.A. These former statements will, no doubt, be made known to the Court insofar as they bear upon its sentencing deliberations, by the Probation Officer's pre-sentence report. Any variation from the facts herein set forth would, in all probability, be the result of incomplete or inaccurate interviewing by the writer or my office staff.

The defendant relates initially that his decision to remain in Troy following his graduation from R.P.I., was strongly influenced by his desire to strengthen and maintain the ties between himself and his school friends.

Mark Mc Donald's involvement in the crimes charged began in the autumn of 1974. He was then living in Troy in an apartment with Yok Lee, a school friend. Yok Lee approached Mark that fall about joining a group of former R.P.I. students

who were, according to Lee, doing research on the production of a controlled substance, which they felt could, potentially, be sold at a profit. Mark was already acquainted with three members of the group. Yok Lee, Neil Winner and Craïg Newman. The fourth member, Peter Lazarski, had evidently graduated from R.P.I. as a chemist approximately a year earlier than Mark.

Mark Mc Donald learned, after deciding to join this group, that the basic plans for production had been laid and that Lazarski, as the group's chemist, was concerned mainly with scaling up the operation to produce larger quantities of methaqualone.

The large profits which had been spoken of never meterialized. Lazarski was only able to produce the substance in powder form which was neither readily usable nor marketable. Commercial manufacturers evidently either capsulize or make tablets of the substance. They were also unable to successfully use a tabbing machine which they purchased. Through arrangements made by Yok Lee and Mark Mc Donald, and with full knowledge and concurrence of the others, some quantities of the drug were sold locally, "fronted", or given away outright. Still, the major portions remained in their possession.

Although they always had an overabundance of the methaqualone on hand, Lazarski continued to produce greater quantities in case they found a better source for distribution. This hoped for "connection" was never made. The group dealt virtually exclusively with people they had known for three or four years,

and never sold their product on the street.

Mark was rarely, if ever, involved in laboratory work, and he spent little time at the Wolf Road "factory". Mark relates that his role was primarily that of a "go for", although he admittedly took part in group discussions and decisions and assisted Yok Lee in the attempted marketing and distribution of the substance.

Until he entered R.P.I., Mark had not experimented with any drugs. He began there by smoking marijuana and eventually tried many drugs, stopping short of what he felt to be hard drugs such as cocaine and heroin. By his junior year he had stopped using all drugs. Mark is not a user of alcohol, since he dislikes its effect on him. He has tried methaqualone (the group's product) on a single occasion and found it extremely bitter and unpalatable in powdered form.

Mark believes that the effects of methaqualone are somewhat like an alcoholic "high". The group apparently consulted the Physician's Desk Reference on methaqualone and determined that it was not a barbituate, although its euphoric, soporific effect indicated potential for abuse and psychological dependence. Mark believes he is probably the only member of the group who is not a user of some controlled substance.

Mark's childhood experiences, and especially the continued moving from place to place, gives some insight into the reasons for his involvement in this matter. Clearly, friendship meant more to him at this point in life than his own

values. There is an odd paradox between Mark's personal abstemiousness and attitudes towards drug users and his admitted participation in this scheme. Mark states that he does not believe that any dependence upon drugs, whether it be quaaludes, coffee, or alcohol, is healthy or conducive to a good life. As the Court will note from the personal references hereinafter submitted, most acquaintances view Mark as fairly mature, and well-oriented individual. Yet, Mark still feels regret over the loss of friendship and comaraderie caused by the arrest and prosecution of the group.

Although Mark has arrived at a clear, albeit belated, recognition of the wrongfulness of his acts and the group's activities, he would still be willing to speak well of all of his fellows with the exception of Lazarski, whom he did not view as a friend. Mark was the last of the group to approach the DEA agents (even though promised immunity) principally because he was personally reluctant to say incriminating things about these friends. This was so even though Mark had ascertained that the others had unfairly misrepresented and minimized their knowledge and participation in the conspiracy to the presumed detriment of Mark Mc Donald and Yok Lee.

The fact that Mark made no attempt to avoid apprehension and prosecution, it is submitted, provides further

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evidence of the absence in this young man of criminal traits and attitudes which require incarceration.

V. SENTENCE CONSIDERATIONS:

Nothing need be said in this memorandum concerning either the legality or the abstract "morality" of methaqualone. It is unarguable that methaqualone is a controlled substance and that Mark Mc Donald has pled guilty to a conspiracy involving a large quantity thereof. Guilt or innocence will not be questioned or argued.

Having established this, however, this Court is left with the burden of fashioning punishment to fit the crime. In this context, it is respectfully (and far from lightly) submitted that methaqualone manufacture, under these circumstances, is not a crime which demands incarceration. This crime was not one which evinced viciousness, depravity disregard of the rights of others, sociopathic behavior nor any other character trait traditionally deemed to merit prison.

It may be suggested that the imprisonment of these defendants will serve as a deterent to future R.P.I. students who might be tempted to misuse their skills and knowledge in a similar fashion. It is submitted, however, that the constantly changing make-up of the student body at R.P.I. make it a particularly unsuitable locale in which to retreat to the "deterrent" theory of punishment, if,indeed, such theory retains any vitality whatever.

PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD

Further, it is respectfully submitted, based upon the writer's experience and readings in the criminal defense field that the threat of incarceration does nothing to deter the "first-time" offender. This is so simply because the offender does not believe he will be caught and prosecuted. This belief is, again, particularly strong in the minds of students and recent graduates who have spent a period of years in an environment where drug use and trafficking is far more prevalent than in general society.

This defendant should not be viewed in the same manner as either an adult felon nor a vicious youth who commits a violent crime in the belief that his age shields him from appropriate punishment. This defendant should be viewed rather as a young man undergoing the often mistake-laden transition from boy to man. This transition is rendered the more drastic and disorienting by Mark's unusual thirst for friendship and permanence in his relationships and the influence of his friends upon him and the dynamics of the group.

It requires no special expertise in psychology to appreciate that a young man coming to college from a thoroughly impermanent home life will be ill-prepared to cope with the illusion of total freedom and independence fostered by five years of college life. That the temporary vacuum in Mark Mc Donald's values was filled by a foolish and ultimately

PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD

criminal enterprise with trusted friends is a tragedy which will only be compounded by prison.

In summary, this defendant does not need incarceration to alter his behavior or hasten his responsible maturity, society does not or should not clamor for such severe punishment, the government does not require the expense of incarceration, people do not need to be protected from Mark Mc Donald and no useful purpose will be served thereby.

VI. PERSONAL REFERENCES:

Annexed hereto are several personal references regarding the defendant, which are submitted for the Court's consideration.

RESPECTFULLY SUBMITTED,

Paul R. Kietzman, of Counsel

ROSENBLUM & LEVENTHAL
Attorneys for Mark Mc Donald
732 Madison Avenue
Albany, New York 12208

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD - PERSONAL REFERENCES OF DEFENDANT McDONALD

R. D. #1
West Sand Lake, N. Y. 12196

June 8, 1976

Hon. James T. Foley
United States District Judge
U. S. Post Office & Court House
Albany, N. Y.

Dear Judge Foley:

This is written on behalf of Mark McDonald who awaits sentencing in your court on a controlled-substance charge.

My relationship with Mark was that of his immediate supervisor while he worked for the New York State Geological Survey. (As background information: my position with the N. Y. S. Geological Survey has been that of Senior Scientist, specializing in sedimentary petrology since 1970. My efforts are directed primarily toward both basic and applied research in that field).

Mark worked as a technical assistant for me and my collaborator, Dr. Raymond Buyce, on our joint projects during two different periods, viz. July 1972 - January 1973, and July - August, 1973.

During his first period with us, Mark's duties in our laboratories involved sample preparation and analysis of several kinds. An important aspect of these projects was the development of techniques for sample preparation that would give us accurate and reproducible results. This turned out to be a drawn out and sometimes frustrating process, but throughout Mark's work was excellent. He performed with diligence, ingenuity and care. When money became available to us for temporary help in the summer of 1973, we were delighted to find that Mark was available for the job, because we knew him to be competent and trustworthy. His second tour of duty proved that judgment to be accurate.

During his time as our assistant, I became fairly well acquainted with Mark. In retrospect, my assessment of his career potential was that he would become a competent professional, although at the time he seemed undecided as to which specific direction to take within the field, and was exploring different avenues.

I reacted to learning of his present predicament with considerable dismay, and found it difficult to grasp that Mark McDonald may have ruined what appeared to me would be a promising career by becoming involved in illegal activity.

I believe that Mark is made of good stuff; that he has the potential to make a worthwhile contribution to our profession, and that his recent

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD - PERSONAL REFERENCES OF DEFENDANT McDONALD

behavior was aberrant to his personality traits. I hope that a program for his rehabilitation can be worked out that will enable Mark to rebuild his life and salvage his chance at a professional career.

Sincerely yours,

William B. Rogers

WBR:R

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD PERSONAL REFERENCES OF DEFENDANT McDONALD

169 Second Street
Troy, New York 12180
June 7, 1976

The Honorable James T. Foley
United States District Judge

Dear Sir:

Mr. Mark McDonald was a tenant in my home from May 1975 till March 1976. During that time I have come to know him as a most pleasant and courteous young man. He was one of the best tenants to have: few visitors, rarely parties and always considerateness of others in the house.

Since his encounter with legal charges, I have naturally reflected about Mr. McDonald. In my position as professor of German at Russell Sage College I have had occasion to teach students who are matriculated at RPI. It occurs to me that Mr. McDonald's transgression might be viewed under the perspective of a certain unreality which student life so easily conjures. That, coupled with some hybris which particularly the intelligent and educated readily fall prey to, can become a tempting invitation to view laws somewhat more lightly.

Judging by comments made during some conversations that we had since the legal charges were brought, I feel that Mr. McDonald has quite realized the full moral and ethical implications of his transgression and I believe in his highest potential for rehabilitation.

Sincerely yours,

Hannelore W. Lennig

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD - PERSONAL REFERENCES OF DEFENDANT McDONALD

171 Swift Road
R. D. #1
Voorheesville, N. Y.
12186

June 8, 1976

Hon. James T. Foley
United States District Judge
U. S. Post Office & Court House
Albany, N. Y.

Dear Judge Foley:

I am writing this statement as a supervisor of Mark McDonald. Dr. William Rogers and I were co-supervisors of Mark from 6/22/1972 to 1/19/73 and again from 6/4/73 for 37 working days. My relationship with him was primarily one of employer-employee. I found Mark to be hard-working and resourceful. He seemed to set high standards for himself and his work was performed well. Given general objectives he was able to figure out techniques for getting the job done with little supervisory help. I would recommend his being rehired today if he were available and wanted to work for me.

As a person, I found Mark easy to get along with. I believe he was quite justifiably frustrated with having invested a considerable amount of time and effort to become qualified for a job that was not available. I suspect that the present trauma that he has brought on himself will be sufficient to bring about whatever rehabilitation is necessary. If he could secure a reasonable job, I'm sure it would be of great positive value.

Sincerely,

M. Raymond Buyce

Dr. M. Raymond Buyce
Senior Scientist (Geology)
New York State Museum
and Science Service

MRB:R

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD - PERSONAL REFERENCES OF DEFENDANT McDONALD

Department of Geology
West Hall

Rensselaer Polytechnic Institute Troy, New York 12181

June 10, 1976

Hon. James T. Foley
United States District Judge

Dear Hon. James T. Foley:

I have been requested to make a statement for your use concerning my assessment of Mark McDonald.

I knew Mark McDonald during the period he was a student at Rensselaer Polytechnic Institute and was majoring in the field of Geology. This covered a period of about four years. At all times I found Mark a congenial and considerate individual. In the three courses he took from me I found him a good student who was able to do high quality independent work. Because of his high potential it was quite a disappointment to me to hear about his recent difficulties. It is my opinion that Mark McDonald can make a substantial contribution to our society and that every effort should be made to establish the proper rehabilitation program for him. I believe it would be a very worthwhile effort to give Mark the best opportunities possible.

Sincerely,

Donald S. Miller

Donald S. Miller
Professor of Geochemistry

DSM:vb

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD - PERSONAL REFERENCES OF DEFENDANT McDONALD

Department of Geology
West Hall

Rensselaer Polytechnic Institute Troy, New York 12181

June 8, 1976

Hon. James T. Foley
United States District Judge

Dear Sir:

Mark McDonald

This letter is to express my opinion of Mr. McDonald's character and promise.

I knew Mr. McDonald when he was an undergraduate student in the Department of Geology here, while he continued through the Professional Program and while he worked for the New York State Geological Survey. Throughout this period (about five years) it was clear that he has considerable ability to do things well; but he often showed indecision about whether it was worth putting out his best effort. I continue to believe that he has the potential for becoming a true contributor - for example as an employee in the State Geological Survey; he has ability, self-control, the right blend of initiative and willingness to cooperate, and so on; he could earn great respect as a technical man. But he possibly still lacks the conviction that to pitch in and use his talents - to be a good geologist at the office and a good neighbor at home - is the wise thing to do, best for himself as well as for the rest of us. It is indecision on that point that has so far, I believe, hindered his best efforts and probably made him dissatisfied with himself.

As to the conversion trick - what might be done to try to turn him around and with what probability of success - I cannot properly judge; that is not my profession. But I am happy to repeat that, if he could be turned around - and possibly a change of company or of environment might be enough - he has the ability to give great satisfaction to an employer, and possibly even to himself.

Feeling as I do that there is a lot of merit in Mr. McDonald, I should be happy if there is any other information I could contribute.

Yours sincerely,

Brian Bayly

M. Brian Bayly
Chairman, Dept. of Geology

MBB:vb

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD - PERSONAL REFERENCES OF DEFENDANT McDONALD

41 EAST 42ND STREET
NEW YORK, N.Y. 10017

June 8, 1976

Hon. James T. Foley
United States District Judge
Federal Post Office Bldg.
Utica, New York 13503

Re: Mark S. McDonald

Honorable Sir:

I am writing to you at the request of Paul R. Kietzman of the firm of Rosenblum & Levanthal, 732 Madison Ave., Albany, New York, as attorney for Mark S. McDonald.

I am an attorney at law and a member of the firm of Krause, Hirsch & Gross with offices at 41 East 42nd Street, New York, New York.

I became acquainted with Mark McDonald subsequent to the death of his grandfather, William J. McDonald, who died domiciled at 149 Porterfield Place, Freeport, New York on June 27, 1975. As a result of my acquaintance with a neighbor of the decedent who recommended me to the decedent's family, my firm was retained to handle the administration of the Estate of William J. McDonald and the estate of his wife, Elizabeth K. McDonald who died in 1967 but whose will had not previously been probated. Mark and Bruce, together with their brother, Capt. William McDonald III are residuary beneficiaries of both estates.

I was asked by Mark and Bruce McDonald to make application on their behalf as administrators of the estate of their deceased grandfather and as administrators with the will annexed of the estate of their deceased grandmother.

In the course of these proceedings I met with Mark McDonald and his brother Bruce several times at the inception of the administration of the estates, at two safe deposit box openings which were required, at my office at the time when the Federal estate tax return was required to be filed and, to the best of my recollection, I have had two or three telephone conversations with Mark McDonald.

Based on such short acquaintance I had no reason to believe that he was anything but of good general character. His demeanor at the various discussions was businesslike and he and his brother have given every indication in their fiduciary capacities of fully complying with all legal requirements in connection with the processing of the two estates of their grandparents including the filing of all necessary tax returns.

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD - PERSONAL REFERENCES OF DEFENDANT McDONALD

The decedent's sister, Miss Mary J. McDonald, resided in the decedent's home at 149 Porterfield Place, Freeport, New York and although the three grandchildren would have every right to ask Miss McDonald to remove herself from the premises so that they could either occupy it themselves or sell it, it is my understanding that the three of them have agreed that Miss McDonald may remain in the premises for the balance of her life or as long as she desires to do so. She has independent funds with which to pay for the care and maintenance of the property during the period of her stay. However, I consider it an act of kindness and consideration to a person who is over eighty years of age and it has been helpful in putting her mind at ease to know that her life style will not be altered as a result of the loss of her brother.

I was shocked to hear from his brother Bruce of Mark's difficulty with the law, since my first impressions of him were that he was adult, mature and law abiding. I have not had any social contact with any of the three grandchildren but I have come to know that their aunt is a very religious person, that their grandfather was an officer of a railroad corporation, that their father had been in military service and that the brother, William J. McDonald III, is presently an officer in military service. It would seem that a person who has been part of such a family should be a subject for favorable rehabilitation and consideration.

Very truly yours,

Joseph J. Salvatore

EXHIBIT TO PRE-SENTENCING MEMORANDUM OF DEFENDANT McDONALD - PERSONAL REFERENCES OF DEFENDANT McDONALD

Department of Geology
West Hall

Rensselaer Polytechnic Institute Troy, New York 12181

RECEIVED
JUN 18 1976
U.S. DISTRICT JUDGE
ALBANY, NEW YORK

June 16, 1976

Hon. James T. Foley
United States District Judge

Dear Judge Foley:

At the request of his attorney, I am writing on behalf of Mark McDonald. I am acquainted with Mark as his advisor and professor in several courses while he was at Rensselaer.

He transferred to geology from engineering in his sophomore year, after a slow academic start. His last year as an undergraduate was very good. Mark continued in our fifth year M.S. professional program and completed 13 graduate credits in January of 1974. He then dropped out of school. I believe he worked for the New York State Geological Survey for a while, but I have not seen him since that time.

Mark in his last three semesters was one of our best students, with a B+ average. He has a keen mind and will be well prepared for a career in geology if he returns to complete his Masters. He has always seemed eager and confident of himself and impressed all of us with his dedication and maturity.

I am sure he is capable of pursuing what started out as a promising career in geology and I ask your consideration in helping him return to a productive life.

Very truly yours,

Robert G. LaFleur
Associate Professor of Geology

RGLaF:vb

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA :

- against - : 75-CR-166

PETER M. LAZARSKI, CRAIG L. NEWMAN, NEIL B. WINNER, YOK LEE, :

Defendants. :

- X

UNITED STATES OF AMERICA, :

- against - : 76-CR-15

MARK McDONALD, :

Defendant. :

- X

The above-entitled matter came on for sentencing at Albany, New York on the 21st day of June, 1976, before Honorable James T. Foley, United States District Judge, commencing at approximately 10:00 a.m.

APPEARANCES:

HON. JAMES M. SULLIVAN, JR., United States Attorney, Federal Building, Utica, New York, by: WILLIAM J. DREYER, ESQ., Assistant United States Attorney.

E. STEWART JONES, JR., ESQ., 28 Second Street, Troy, New York Attorney for Defendant, Peter M. Lazarski.

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35 First Street, Troy, New York, Attorneys for Defendant, Craig L. Newman, (DONALD J. SHANLEY, ESQ., of Counsel).

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90 State Street, Albany, New York, Attorney for Defendant, Neil B. Winner.

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732 Madison Avenue, Albany, New York, Attorney for Defendant, Mark McDonald.

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: United States of America versus Peter M. Lazarski, Craig L. Newman, Neil B. Winner, Yok Lee, 75-CR-166. United States of America versus Mark McDonald, 76-CR-15.

MR. JONES: E. Stewart Jones, Jr. appearing with and for Mr. Lazarski.

MR. SHANLEY: For defendant, Craig L. Newman, Donald J. Shanley.

MR. CHEESEMAN: For defendant Neil B. Winner, Paul Cheeseman.

MR. MICHAELS: For defendant Yok Lee, David S. Michaels.

MR. KIETZMAN: For defendant Mark McDonald, Paul Kietzman.

MR. DREYER: Your Honor on May 3, 1976, defendants Peter M. Larzarski, Craig L. Newman, Neil B. Winner and Yok Lee entered a plea of guilty to count 1 of indictment 75-CR-166. On May 5, 1976, Mr. McDonald entered a plea of guilty to that count. Also at that time the court deferred sentencing in this action until the completion of pre-sentence investigation. The Government now moves for sentencing of all five defendants in this case.

THE COURT: Well, I think, Mr. Dreyer, at this time -- maybe you want to state it later -- you should state the recommendation you intend to make.

MR. DREYER: Sentencing recommendation?

THE COURT: You did state those at the time the pleas were taken?

MR. DREYER: Yes, Your Honor. The Government makes or moves this Court for sentencing without any further recommendation than those already made in the letter submitted to the Court. At the time the plea was entered in the case, the Court did take the recommendation from the United States Attorney for Young Adult Offender. In each of the five cases, we did recommend the treatment as Young Adult Offender for each of these five individuals. Other than that, the provisions which will be carried into effect after sentencing after today are a matter of record. The United States agreed at that time that upon sentencing or at the time of sentencing, the defendants could be placed on bail pending appeal.

THE COURT: And there will be no objection under the United States v. Burke.

MR. DREYER: No objection under the United States v. Burke.

THE COURT: I will ask all of the lawers now, have you all read -- I assume you have -- the pre-sentence reports?

MR. JONES: I have read Mr. Lazarski's.

MR. SHANLEY: And I have read Mr. Newman's pre-sentence investigation.

MR. KIETZMAN: Yes, your Honor.

MR. MICHAELS: Oh, yes, your Honor.

MR. CHEESEMAN: Yes, your Honor.

THE COURT: After reading those reports, have you read anything in them that you want to take exception to, Mr. Jones?

MR. JONES: There is nothing of any consequence in Mr. Lazarski's report which I have any quarrel with.

MR. SHANLEY: And my answer is the same.

MR. KIETZMAN: No, your Honor. We don't wi[illegible] to refute anything.

MR. MICHAELS: No, your Honor.

MR. CHEESEMAN: No.

MR. KIETZMAN: I had one or two little things to comment on.

THE COURT: I will allow that, but I didn't know at the time whether you had sufficient remarks to require a hearing.

MR. KIETZMAN: I don't think so, no, Your Honor. I don't think my objections are such that they would require any factual hearing.

THE COURT: Your position is factual clarification of a viewpoint given in the pre-sentence report?

MR. KIETZMAN: Yes, Your Honor.

THE COURT: I will hear you in order, of course, and I will take all the sentences together. I have read the pre-sentencing memoranda over the weekend. I read them Saturday and Sunday and reviewed them again this morning in discussion with the Chief Probation Officer, and I have read, of course, several times the pre-sentence report, but now I will take the lawyers' statements that they wish to make in behalf of their clients. Mr. Jones.

MR. JONES: Well, Your Honor, I will be brief. I have submitted to you a rather extensive pre-sentencing memorandum which I think profiles in some detail the goals, accomplishments, the promise and potential of Peter Lazarski, and I don't think there is any reason, if you have that report, and in view of Mr. Waterson's report, to go through the background again. I think the pre-sentencing memorandum which I have submitted to you also catalogs the reasons and the authorities and the reports which commend to the Court a

non-incarceration type of sentence in this case. I quoted some 16 different authorities for the Court, and, of course, submit also the quotation and articles from the American Bar Association, the National Council on Crime and Delinquency, the Model Penal Code, the National Council of Probation and Parole Officers and a whole litany of councils and authorities which support a non-imprisonment, probation or some other form of non-imprisonment as punishment. I would like to speak briefly to what I think the most important aspect of the sentencing process in these particular cases is, the cases involving these young men. I think that the implementation in these cases, the concept of individualization of punishment -- I think I can speak generally for these young men, that while there are minor differences in degree of culpability here, they stand substantially on the same footing. The higher the credit the young man has been over the years of his life prior to the time of his involvement in the criminal process, I think the more severe, the more agonizing, the heavier the penalty of the crime itself. Mr. Lazarski stands before you with a life unsullied by any misadventure until his involvement in these present criminal forays. He worked, as the Court well knows, from the age of 13 to date. The conviction here carries with it, for a man of his promise,

his potential, for a man of his character, substantial personal consequences that I submit to the Court are severe punishment. He is, for the balance of his life, a prisoner of his crime and of his criminal record. He is afflicted with all the disability that attends a criminal conviction. He is a felon and will be for the balance of his lifetime. Much of the promise, much of the potential that he had, which he still has, many of the goals and aspirations which he had and which he still has, are forever aborted by his personally placing himself in the position where he is now a felon. The agony that he has imposed upon himself, the punishment that he has inflicted upon himself are indeed severe, and they are severe because of the nature of the man, because of the character that he brings to this Court. He is a college graduate. It is his first offense. He comes from a strong family, a good family. He's a good and decent man caught up in a mistake for which he must suffer the consequences, but this aberrant venture was an isolated misdeed. It will never happen again. Mr. Lazarski stands before this Court having acknowledge his responsibility for his conduct. He stands before the Court not in need of rehabilitation, not in need of further deterrent. What he needs now is compassion and understanding. The Court knows the extent of

his cooperation with the Government when he was first apprehended. He and only he cooperated extensively with the Government when first apprehended, and since his apprehension, he has continued that cooperation in detail with the Government, responding to their inquiries and questions and doing anything he could to facilitate their investigation, the continuing investigation. The Court knows well that the only possible basis for his imprisonment in this case is the deterrent to others. That is the argument that is being advanced by the Drug Enforcement Administration. I don't think it's an appropriate argument in this case because that ignores the concept of individualization of treatment. It ignores this young man's life, all that he has done before and all he hopes to do. If you start imprisoning men of this sort indiscriminately simply to set an example for others, as has been recommended in this case, I understand, you obliterate the enlightened concept of fitting the punishment to the offender. Treat the offender, not simply the offense. On all the records before you, Judge, I submit the nature of the offense here is heavily outweighed by all the other factors that should be relevant prior to the time you impose sentence. I would ask the Court to avoid punishing this young man, augmenting his punishment by incarcerating him.

There are alternatives here. Perhaps a period of probation that required him to work in a half-way house, to devote his time and effort to a drug rehabilitation program and to make a contribution of his time, and offer a period of time to half way houses, to help them continue their work, or to drug rehabilitation programs to help them continue their work, a commitment to public service of some kind that will benefit the public in some way. There are so many ways of treating Mr. Lazarski and the young men who stand here with him that serve society better. I simply implore you to treat them as individuals and not as examples, to recognize in the sentence, the punishment that you impose, the fact that these are good men. They are college graduates. It's their first offense. They have enormous promise and potential. A sentence of imprisonment could abort that. I would ask the Court's mercy in imposing sentence.

THE COURT: All right. Mr. Lazarski, you may speak now for yourself. You can say anything you want for the record.

MR. LAZARSKI: Well, Your Honor, I know that what I did was very wrong and that now because of what I did I have a debt to pay to both society and to my family, and I am ready to accept the consequences of my actions.

THE COURT: All right. Mr. Shanley, you may now speak for your client.

MR. SHANLEY: Your Honor, I want to say just a few words this morning on behalf of my client, Craig L. Newman. Mr. Jones has already quite ably put before the Court many of the thoughts that ran through my mind as I sat here this morning. Your Honor has before you the excellent probation report, and we have submitted on behalf of Craig our pre-sentence memorandum annexed to which are numerous letters from educators, officials and friends, family friends attesting to his previous exemplary life, his personal characteristics and his goodness. He certainly would be a fit and proper person for probation. I cannot envision him ever again coming in conflict with the law. He is gainfully employed and is living with a supportive family. He himself, as shown in the probation report, had every possible potential and still has. He has a good mind, a mind that's been trained. He has been educated. Previous to this incident he never had any scrape at all with the law. I think it was one isolated act. I cannot imagine him ever again coming into conflict with the law, and I have every reason to believe that he would make a success of probation, and would make a success and will make a success of his future life, so I can

only echo Mr. Jones' sentiment and ask this Court to extend to Craig Newman mercy and place him under probation under whatever program Your Honor might see fit, and I ask that he not be incarcerated.

THE COURT: All right. You have a right now, Mr. Newman, to speak for yourself.

MR. NEWMAN: I only wish to say, Your Honor, that I wish you would believe that I never wanted to hurt anyone. It turns out I've hurt quite a few people. I did not really think that I was hurting anyone with what I did, although I now view that as not true. What I did hurt many people. I don't just mean my family; I mean those concerned immediately with my life, but that my actions, unbeknownst to me, may well have hurt other people. I have a great many things I wish to do, and whatever Your Honor does today, I wish to say that I still am eager in my life.

THE COURT: All right. Mr. Cheeseman?

MR. CHEESEMAN: Your Honor, I have stood before too many sentencing courts to think that what I might say here would change Your Honor's mind. I don't think I can do that, but I realize the burdensome task that faces you this morning. Indeed, it's one I would call a tortuous task, and I only hope that by a few remarks I might make that

if Your Honor saw fit to give these defendants a sentence which would be one of probation, that what I might say might make it easier for Your Honor to impose that sentence. These five young men, Your Honor, are really young men that possess the minds that will form the future of this country. I am sure that the probation report concerning each of these defendants reflects such a finding, and, Your Honor, as has been stated previously, each of these defendants, I am sure, has learned their lesson. I don't see what a period of incarceration would do to help them or to help society. It's true that there are those who think that punishment by incarceration is a form of deterrent, but being realistic, Your Honor, if we look at the number of people that have been incarcerated, if we look at the stories that have been given their incarceration as published in every newspaper in America, if we look at the other news media that daily broadcast incarceration of people having been found guilty of crime, I think, being realistic, we would have to say or at least there would be a good argument for saying that incarceration does not deter crime. I am not saying these things here, Your Honor, to let it be thought that the thought of incarceration wouldn't go through my mind if I were sitting in your position now, but I think if I were there,

Your Honor, I would be wondering to myself, by giving these young men a period of incarceration, is that going to be sufficient punishment? I have practically adopted this young man that stands beside me. I have been in touch with his parents on numerous occasions, and, Your Honor, if you s[illegible]t to order a period of in[illegible]cceration, all I can say is that that would not compare with the punishment, the agonizing torture, that this boy has brought on himself already. Now, we have to look again, I think, Your Honor, on the reason they are here. Methaqualone, I had never heard of that before this case came into being. I guess some of the materials used, until some time shortly prior to this incident, were not even controlled substances. As I understand it now, Your Honor, and without trying in any way, shape or form to minimize the illegal acts that were committed by each of these individuals, I now understand that this methaqualone is a substance that would bring about in a person, if used in sufficient amount, a form of intoxication much -- very similar to the form experienced by those who imbibe in too much alcohol. I am not saying it's right, but thinking along those lines, I think back to the stories that I have heard about an era that existed in the '20s and touched the life of many individuals that you and I know very well. Illegal

alcohol. Now, I don't think, Your Honor, that people in those days could be branded as criminals because of their connection with illegal alcohol, although I know that public opinion at the time cried for such treatment. I think, Your Honor, thought it might be easier if you did have a period of probation here to consider the drug, the controlled substance, that is involved in this case and consider, perhaps along the lines I have just talked about. Your Honor, the defendant Winner now stands before you. I am sure you realize from having gone over Mr. Waterson's probation report, this is a fellow who is penitent. He's remorseful. It's something that has focused his sight to the importance of living according to the laws of our land. I know that never again will he stand before you or any court charged with having broken the law. I didn't know until now, but I assume other of the defendants, from having heard Mr. Shanley and Mr. Jones -- I assume that there were others who cooperated with the Government, and knowing this boy's background and from things he has said about the others, it doesn't come as a shock to me that all of these young men have cooperated one hundred percent, but I do know that the defendant Winner -- I thought he was the first to cooperate with the officials and answer all questions put to him. I may very well have

been in error, but the fact remains that he did cooperate. He is gainfully employed now, Your Honor, and he has been gainfully employed. He is employed in a position of trust, Your Honor. He is thought of well by not only his employees, co-employees, but he is thought well of by his supervisors, and I just hope that Your Honor can see that by placing each of these defendants on probation or at least the defendant Winner, that justice would be best served. Thank you, Judge.

THE COURT: All right, Mr. Winner, you may speak for yourself now.

MR. WINNER: All right. Yes, Your Honor, I realize I have done something wrong, and I am truly sorry for what I have done, and I have learned my lesson. I guess I just hope that I get a second chance to show what I have learned, and that I can promise that I will never again do anything wrong like this.

THE COURT: All right. Mr. Michaels?

MR. MICHAELS: Your Honor, at the risk of some redundancy, because I have certainly heard some of the factors that apply across the board to each of these defendants eloquently stated by counsel, and I do want to speak briefly before Yok Lee who wants to speak as well. I want to mention particularly the family that this man comes from. Both his

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father and his mother and his two sisters and uncle are all here today. They, in their various ways, have sacrificed for many years to help Yok develop the potential that we see indicated through his academic record and the history that I know the Court has read, and the probation report, as well as the remarks the Court has made. Their devotion to education, and particularly to their only son's education here, I think makes them stand out as a stable family, as a sign of somebody who made a misstep, but has not demonstrated a pattern of criminality mandating incarceration. The newness of each of these people to the situation they are now in -- well, it's not necessary to direct the Court's attention -- it stands out so strongly in the history of each of these boys. I have come to know this defendant fairly well, and I have spoken with him. I note particularly some descriptions of him that were contained within the probation report and recommendations sent by his employers and professors. I note that he is described there as strong-willed. He's praised for his initiative and reliability, too. One of the letters particularly mentioned that he was visibly shaken by his conviction here. Yok has spoken with me about his feelings the night he was arrested. This was his first experience in being locked in a jail cell, and

while it certainly was not for an extended duration, it was an important time -- we urge Your Honor -- an important time for each of these defendants, but particularly for Yok. His description to me of his frenzied pacing of the floor, his feelings about the wrongfulness of what he had done that had brought him into that situation rings very clearly in my mind, and I hope to be able to communicate to this Court that we feel this defendant deserves one opportunity. In terms of the substance itself, I would like to particularly note the comments that have been made immediately prior to this statement. I would like to point out that in so many ways what we know happened here between December 11th and December 19th, 1975, shows and reveals that we are not dealing with people experienced with the world really, but certainly not with the world of criminality in any sophisticated way. Time after time in looking at the facts, we see one or another of the defendants acting in a way that I can only characterize as naive, and I think, Your Honor, that we see revealed in the entire pattern a group of people just out of school taking a step, perhaps in the wrong direction, but a step that is one step away from a general pattern of upstanding life, of obedience to the law, of sound families, of people, in short, who will not be back within the criminal

justice system. We urge this most important point. As far as the relationships of these individuals and the acts that occurred, I want to say on behalf of Yok Lee that he does accept a full and equal responsibility here. He helped willingly in various ways, and not only the limited overt act specified in the indictment, and agreed to do more in the future, which didn't happen. He also -- I find significant that he, as any of them could, could have stopped this at any point, and that he failed to do so, and he realizes the importance of that, and the fact that it was not only illegal but wrong as well. I note, Your Honor, within the probation report these defendants profited relatively little by this plan, if I can characterize it so. I think we have seen -- each of the defendants' counsel has seen the impact on the families of not only the anxiety and the uncertainty, but also some of the rather more starkly freightening possibilities that lie within the determination of the Court. I know each of the attorneys has commented at least briefly on cooperation, and we have seen here a general pattern in all of the defendants where there has been cooperation, not a defiant or arrogant attitude, but a contrite one, and if I may say so, a humble one, particularly with regard to Yok Lee. Your Honor, I must note that in a conversation last week with

the Assistant United States Attorney, that he related to me what I had been told by the investigating officer, that of all these individuals, that Yok Lee particularly had co-operated a hundred percent. Now, I have to say, Your Honor, that this was a subject of stipulation between myself and Mr. Dreyer. It was not a million percent unlimited, and yet within that, it was a hundred percent.

THE COURT: No, I have been informed by the probation officer that they have cooperated and so forth.

MR. MICHAELS: (Continuing) Yes, Your Honor. There is only one further thing beyond that one hundred percent, Your Honor, and that is the defendant Lee has also surrendered to the Drug Enforcement Administration a particular device that could have been used in the future to make pills out of illegal drugs. It's called a tabbing machine, and it's so indicated in the sheet which I have, File number C735008. There was certainly an aspect of cooperation, but going beyond simply cooperation, this was an affirmative act that can prevent crimes and perhaps many crimes that might have occurred in the future, and an affirmative act that shows the real contrition and the depth of feeling that this defendant has about what he did, about our situation here today, regardless of the sentence of this Court. One thing that rings most

clearly in the many times that I have spoken with the defendant about the sentencing possibilities are his concerns about the disgrace which he feels perhaps justly that he has brought on his family. It's his concern for his family and their concern for him reciprocally which stands out most in terms of his regret. I think it was Mr. Newman who said something about not having intended to hurt anybody and having hurt many people, and I think this is something that Yok feels particularly strongly about, and particularly with reference to his family who have stood by him, not only throughout his education and his development into a young man, but throughout these proceedings over the last six months. Your Honor, I would like to ask the defendant to speak, and if I may reserve the right, to look over my notes.

THE COURT: Mr. Yok Lee, you may speak for yourself.

MR. LEE: Well, Your Honor, a question that seems to be occurring in this case is how did a bunch of bright good boys get into such serious trouble, and in speaking -- I think I speak for everyone -- that for the past six months I have had time to reflect about what has happened, and I realize it was strongly a case of immaturity, and that in those six months I have had an opportunity to grow and to gain a lot of wisdom, much more than I had in the previous

23 years. Basically, it's taught me that breaking the law is a very serious act and that it's nothing to be taken lightly, and the consequences can be quite severe. Today the four of us -- I realize it's probably one of the most important days of our lives. Regardless of what happens here, I feel that I still have a bright future and that I have a lot of debts to pay. There are many people who have stood by me, my parents, my family, my friends, my former instructors, and I wish to say that for all of us, the opportunity to show everyone that their faith in us is justified will definitely be taken.

THE COURT: All right. Mr. Michaels?

MR. MICHAELS: I think the sincerity of this defendant to believe in himself stands out quite clearly. I would only conclude that I think incarceration here would be unnecessary and unnecessarily disruptive to this person, and I would ask the Court, if the Court can possibly see fit, can possibly find it suitable, that probation and leniency be considered here, it would be, we believe, in the interest of justice.

MR. KIETZMAN: I would like to comment on a few things that I don't think have been touched on in the comments of the other attorneys. The first thing that has troubled me

throughout the course of this case is that so much has been made of the statistical significance of this prosecution, so many pounds of controlled substance, so many doses, the second largest amount, and these statistics throughout the course of this prosecution have put a great deal of emphasis on the statistics from DEA agent. I think that this Court, as the rest of us is aware, and I would be foolish if I did not think that the Court itself did not feel some pressure was not aware of the significance which some people have attached to the statistics involved, and I was, and I did afford myself the opportunity to read the pre-sentence report. I must confess that even in that report the first paragraph that I read contained more statistics concerning the statistical significance of this particular prosecution. I would submit to this Court, on behalf of this man and all of the defendants, that to use an extreme example, no matter who did sell it, if one person is killed or whether 20 are killed, the essential quality of the act is the same, and I submit that the manufacture of a controlled substance is still the same offense and it carries the same degree of approbriousness whether one pound is manufactured or whether many pounds are manufactured. I would not hesitate to commend the office of the DEA. I think they are to be

commended, and their work will not be by me dismissed lightly. I must admit that the drug methaqualone is new to me. It's not heroin. It's a soporiphic drug which has a potential for abuse which I would submit is not much more than the Dalmane which Senator Hays took very recently and Valium which is almost a staple of the American diet. I would submit --

THE COURT: (Interrupting) He is a Congressman, isn't he?

MR. KIETZMAN: Yes.

THE COURT: Not a Senator.

MR. KIETZMAN: A Congressman, pardon me. It is not such a depraved act as should automatically be said to demand imprisonment. Also raised in the statement made in the pre-sentence report -- and I read this quickly, and I hope I am not misquoting it, but also a figure of $10,000 as the group's take or whatever on this operation. Now, I would point out that -- by the way, I don't know where this information came from, but I feel compelled to comment on it, that for this approximately year's operation that was charged in the indictment and the cross examination has revealed, it seems to me -- or I am informed that no single defendant pocketed more than the approximate sum of $900.

THE COURT: I have nothing about $10,000.

MR. KIETZMAN: The figure was mentioned in Mr. McDonald's report, the figure of $10,000. I did wish to point out that whatever may be the accuracy or source of that figure, I have indications that the profit was extremely minimal. At any rate, I want to at this point leave that aspect of what I am saying because, as I indicated, I was somewhat dismayed about the statistical significance attached to these figures. I would hope and urge that this Court use its discretion and judgment, and not be obscured in any fashion by the gravity of the crime that's been urged upon you. Regardless of how it views the crime that these defendants are charged and now convicted of, it is still a crime, and I would submit that the time is now when the nature and the gravity of the crime must be temporarily overlooked, and we must decide what punishment the individuals merit. There has been a lot made of the decision between the necessity to incarcerate the defendants and the other possibilities which might befall them. I have heard numerous reasons advanced in law school and since law school as to why we incarcerate persons. One reason is to isolate the criminal from society. I don't think I have to say a great deal about that in connection with this defendant,

Mark McDonald. The Court has read the pre-sentence recommendations along with the recommendations from colleges, Government officials, and I submit to this Court that I don't think the people of the State of New York, the people of the United States, have any need to be protected from Mark McDonald. In fact, I would submit, as many of the attorneys have already, that, disregarding for the moment this particular venture, I think these people are precisely the type of people that this country needs, and we need positive endeavors. We need to direct their endeavors in positive directions. Another reason for incarceration some of the attorneys have touched on is the idea of a deterrent by example. I would submit to the Court, I first of all agree with some of the other attorneys that this is not a particularly appropriate consideration. It certainly should not be the overwhelming consideration in the Court's mind, but I would further submit that such deterrence is not likely in this situation. I agree with what some of the other attorneys have said. I'll bet the professional and hardened importers of controlled substances probably had a good chuckle over what they have read or what they know of what these particular defendants did. They simply are not hardened and professional people and should not be placed in the category

of people who make their living by importation and sale of controlled substances. No one is likely to be deterred by the activity of these young men, by any punishment this Court may see fit to impose. I think there is also some justifiable -- that the people of R.P.I., the central institutions of higher learning, are very concerned that well trained and well educated young men such as these take this opportunity to misuse their education and misuse their talents. I am sure that in the fall there will be an incoming freshman class at R.P.I., the State University of New York at Albany, Union College, who never have heard of these defendants and will never profit by anything that takes place today. This will not be a deterrent to misuse all they learn in their education. I would submit to the Court further that the real problem with the deterrent theory is the fact that first offenders simply aren't deterred by harsh sentences. The problem is that they simply don't believe that they are going to be caught, and these are some of the reasons submitted, that there is perhaps a certain arrogance amoung young men of this age with their intellect, their newly found freedom. There is an arrogance in this age, a transition from boyhood to manhood that everyone here in this courtroom have undergone. I would point out to the Court -- perhaps it's contained in

Mr. Jones' material, but I just point it out in an attempt to emphasize it. In Great Britain, a man knows that if he is apprehended, he will be punished severely, and this appears to have an equal, if not greater, deterrent effect on criminal activity in Great Britain, but this is a fine line, but one other reason that has sometimes been given for incarcerating people is for retribution. I don't think anybody has previously argued this scholarly, legal opinion for some 75 years, but it is evidenced to me since I have left law school and cast aside some of the educational values that have shaped my thinking previous to being admitted to practice, that retribution is, in some cases effective, but the question arises in the Court's mind, whether it's articulated or not, as to the act for which the individual is imprisoned. It's a feeling in the breast of the community. The community feels some sense of outrage about the acts committed. I became familiar with this case through the media. I saw these yound men on television. I read about them in the papers. I have to admit that I was very surprised when I became involved in this case at how tame and how small and how ordinary these defendants were, by comparison to the image I had derived from the media. I haven't made any survey of how the public feels about these defendants, and I only

knew what I read about these defendants, but I feel that if they knew these young men, if they were present here in the courtroom and had heard them speak this morning, and if they knew the sincerity of these young men, there could not possibly be any public clammer for the incarceration of these young men. I believe that the question that's left in the minds of the public at that point would become, what supervision, if any, do these young men need to readjust their lives to lawfully pursue their goals? That's a question that obviously can't be answered. It is a choice, and it is an agonizing choice as Mr. Cheeseman pointed out. By and large, the report on Mark McDonald could probably be used as a job reference by Mr. McDonald if it didn't contain some extensive references to the criminal act with which he is charged. Nevertheless, the Court at this point is going to have to resolve the paradox of this exemplary young man and four other fairly exemplary men. It appears to be totally out of character from their previous lives. The Court must take the just steps, giving consideration to all of these factors. I hope that the Court will not -- and I don't think it will -- ignore some 22years of good conduct and diligent work and scholarship and throw the towel in on these young men in their first criminal offense. I would submit to this Court

that is exactly what we are doing when we incarcerate a young man and abandon a young man of this age. There was a report in some recent paper which involved the distribution of the executive budget of the State of New York with respect to what rehabilitative work was being done and how much money is being spent. Again, I was dismayed to learn that most of the money, 95 cents out of every correctional dollar goes simply toward custody and supervision of inmates, and only about three cents goes towards anything that's remotely rehabilitative. I feel that incarceration would hinder and not help these boys. I would quote from one of the justices that "If institutions are the high school of crime, then our prisons are the universities of crime." The significance of that statement should not be ignored either. I think Mark McDonald's feelings are probably best understood if the Court were to make this resolution between good character and appropriate punishment. The arrogance shown on that day, combined with what I spoke of before as part of the youthful arrogance which all of us have gone through, is hard to ignore here. They feel perhaps beyond the approach of the law. I think I should point out to this Court today that by many conversations with Mr. McDonald, and most notably the first that I had when we first became acquainted, were not

done in confidence that this Court would consider youth, good character or anything else that I am suggesting so he would not go to jail. Mr. McDonald was very apprehensive and was sure he would go to jail for these acts if convicted, and I would submit to this Court by the same token that Mark McDonald has to straighten out and be rehabilitated. I can't foresee any future criminal involvement by this individual. I would submit to this Court that the Court need only put this young man on probation and keep him under supervision. If I am wrong on this, and if this defendant becomes involved with the law again, it still lies within this Court's jurisdiction to sentence him in the future. I would submit that the defendant is well aware of his misdeed, that the mark that this leaves on him is incalculable. I therefore would urge the Court to give this man a chance.

MR. McDONALD: I realize I owe a debt to mankind and to society. I have strayed from the path. This Court has set me anew on that path.

THE COURT: Well, we have had a full presentation, and these cases, of course, are serious. It's the type of presentation I wanted. I am going to impose my sentence collectively. You are all here before me, but I do want to say I have read all your pre-sentence reports. I know a lot

about your backgrounds. It's difficult at times to impose sentences, and I have imposed hundreds of them, and I, of course, have had some which have had emotional circumstances involved, and these sentences, of course, are difficult because of your backgrounds. The elements in your favor were well stated here in different ways by the attorneys, and I have kept those elements in mind, and I have read the letters. There are numerous ones that came from public officials, teachers, professors, places in which you have worked, your employers, and people from all walks of life have faith that you should be placed on probation and given another chance. My main concern, of course, is your parents. Their hopes and their aspirations and their dreams are much affected by what you have done, but I have no feeling that, in any case, that you have been destroyed because you are not. You have potential. You have degrees, Bachelor of Science, Chemistry, a Bachelor's Degree in Geology. Mark McDonald has a Master's Degree, and it's hard to understand what happened. Maybe it's a disillusionment with life that's running throughout our country. Maybe there is too much drugs in universities, but that's not for me to decide; that's for the administrators and the universities mainly to try to educate, let you know the difficulties that will come, but after this character

consideration -- and I went over it in my mind often -- I knew something about the cases when I first had the suppression hearing. I knew more about them when I heard your pleas. I knew more about you people as individuals, but I finally, of course, was fully enlightened when I had the pre-sentence report. The fact, to my mind, that came through was that this is not a spur of the moment operation. I had that impression, but it took place over a period of months. It started on a small scale, and I had no information here that anybody made great profits, but it became sort of a business, and with your brains diverted to the wrong channel, of course, you organized into a company and as a business, so there is no feeling on my part that we can put it in the type of activity that was a childish prank because it was calculated and was deliberate and was done for commercial purposes. I mean your organization ran not only into the manufacturers and chemists, but you even had two salesmen, and it's hard to believe that your organization ran that way, but it's unquestioned from the pre-sentence report that that is what happened. All of you, I think, were conscious -- I don't know whether you knew about the Federal Law about controlled substances, but I think you were conscious that you were doing something wrong. The sad part is that you were out

ready to distribute this methaqualone. I don't know that much about its contents or its use, but you were ready to sell it throughout many universities, and I think you were ready to sell it to freshmen, sophomores, people coming into colleges new from high schools, and that's where you people came from. You all have excellent high school scholastic records. You had stable family circumstances, but you didn't care what the consequences were of this selling because you had a motive, to get a profit, make money. I don't know why because you are able to work, you are able to go out in the world with your degrees and earn your way, but because of the type of crime we have here, it can't be minimized. There is talk about a number of dosage units, but I am not overwhelmed by that. The only consideration that's overriding and controls my judgment against probation is the fact that we have to have a deterrent. Of course, we don't know -- I don't know any more about it than anybody else. I have to think of the interests of society, the interests of justice. Often we have before courts uneducated people, people who come from broken homes. At times you think they have a right to be resentful and go out and commit crime, but there is nothing of that kind in your favor because you just didn't have to do it, and you did it, and I have to think that maybe

some day -- I know one attorney has argued it may never happen again in a university, but maybe again some day it will come where a group will try to do the same thing. I have thought of alternatives, of course, of public service. You have brains. I want to keep telling you that those brains will be useful and you will be able to find your way back into the best part of society, that the brains you have, of course, will be affected by the sentence I impose, but at least in your Federal system, we are progressive, we think we are, and the type of sentences that we impose are something we give consideration to. I have thought of alternatives where your brains can be used in public service, drug education, things of that kind, but that is also a part of our programs in our institutions, particularly when you are treated under this statute of the Federal Youth Corrections Act which gives you some advantages. So I tell you again, I have treated you as individuals. My sympathy, of course, is extended to your parents and your families because they have been through an ordeal, but I adjudge each of you a youth offender as was agreed upon by the prosecution under 18 U.S. Code Section 4216. I find from your backgrounds, education and the type of crime we have involved here that you will benefit from treatment under the Federal Youth

Corrections Act. The sentence I impose upon each of you is under 18 U.S. Code 5010-B. This places you in the custody of the Attorney General of the United States for treatment and supervision until discharge by the Youth Division under 18 U.S. Code 5017-C, and I will explain what that type of discharge means. It states that you shall be released conditionally on or before the expiration of four years from the conviction, and unconditionally on or before six years from the date of conviction. The type of offense, of course, is weighed by the parole commission, but a lot depends on your own attitude when the day comes when you have to serve under the sentence now passed. All the sentences on each of the defendants are stayed because I think that was part of the agreement, pending an appeal under Federal Criminal Rule of Procedure 38A2, and I am directing your release pending appeal in the same amount of bail posted, of the same type of bond as previously posted. Defendant McDonald is on his own recognizance to be continued in that status pending review. Now, the appeal, of course, is limited and approved by me in regard to the denial of the suppression motions that were made for each defendant, and it's under United States against Burke 517 Fed.2d (377) 2d Circuit (1975), and I understand -- of course, it can be stayed again,

Mr. Dreyer, if there is no objection by the Government.

MR. DREYER: That is correct, Your Honor.

THE COURT: So your way is clear. The attorneys will be filing the appeal and review on the question we have regarding suppression, and I do want to say in closing, because often our law enforcement agencies are criticized and sometimes justly and sometimes unjustly for their work that they do in State and Federal Government, that the drug enforcement agents and the administration agents should be complimented because it was through their investigative ability and their intelligence that they stopped this whole operation really before it began, so their agency and their agency work that worked on the cases, of course, are complimented by this Court, and I am sure should be equally complimented by their superiors. Now, the Clerk's office and Mr. Berroyer will tell the attorneys what you have to do in regard to the bail situation because these defendants are still free, but you should make the necessary arrangements to satisfy the stay of execution of the sentences.

Mr. Waterson?

MR. WATERSON: I notice that you declared them Youthful Offenders. Do you want to declare them Young Adult Offenders under Section 4009?

THE COURT: That's right. I adjudge them Young Adult Offenders -- that's the right word for it -- under 4209. The finding I make is under 18 U.S. Code 4216 which refers to the finding that must have to be made to adjudge them as Young Adult Offenders under Section 4209, so I think our judgment and my statement here that's been made should be correct to that extent.

MR. DREYER: Your Honor, at this time, Count 1 of indictment 75-CR-166 should be dismissed.

THE COURT: All right. Motion granted. Those counts are dismissed, and I direct that an original and copy of the appeal be filed with the U.S. Court's office at this time. All right. You have your Notices of Appeal prepared. You can file them within the next three days. That will be satisfactory. Execution is stayed, at least until the filing of the Notice of Appeal.

(Whereupon, the proceedings in the above-entitled action were concluded.)

STATE OF NEW YORK)

COUNTY OF RENSSELAER)

M. PETER TWEEDY,

being duly sworn, deposes and says:

THAT he is a Registered Professional Reporter and Notary Public in and for the State of New York;

THAT he acted as the Reporter before whom the proceedings in the above-entitled matter were held on the 21st day of June, 1976; and,

THAT the transcript to which this affidavit is annexed is a true and accurate record of all of the minutes, to the best of the deponent's knowledge and belief.

M. Peter Tweedy

Sworn to before me

this 5th day of July, 1976.

Donald D. Morris

Notary Public
State of New York
My commission expires: 3/30/77

BEST COPY AVAILABLE

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ROBERT LA GRASSA, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 62-20 60th RD MASPETH, N.Y.

That on the 22 day of NOVEMBER, 1976, deponent personally served the within JOINT APPENDIX upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose.

~~By leaving _____ true copies of same with a duly authorized person at their designated office.~~

By depositing 1 true copies of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United Stated post office department within the State of New York.

Names of attorneys served, together with the names of the clients represented and the attorneys' designated addresses.

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Robert La Grassa

~~Sworn~~ to before me this
22 day of November, 1976

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1977

77